

Northamptonshire County Council

Policy for payment of Special Guardianship allowances for children in care

April 2016

Agreed at Cabinet March 2016

**Special Guardianship Allowances**

**1. Introduction**

1.1 The Adoption & Children Act 2002 amended the Children Act 1989 to provide for a new Order, ***Special Guardianship***. Special Guardianship Orders (SGOs) are intended to meet the needs of children who cannot live with their birth parents but for whom adoption is not appropriate. The Prime Minister’s Review of Adoption in 2000 identified the need for an alternative legal status for children, which offered greater security than long term fostering but without the absolute legal severance from the birth family that stems from an Adoption Order. The SGO is intended to offer more than a Residence Order or Child Arrangements Order in terms of the security it brings and the support services that may be made available to the child and Special Guardians. The full implementation of the Adoption & Children Act 2002, including the provisions for Special Guardianship, came into force on 30th December 2005.

1.2 It is an order which should be of particular relevance to foster carers, including connected persons carers, offering a permanent home to a child where adoption is not a suitable plan. It can be a very positive outcome for children in settled long term placements as it provides security for them and reinforces the commitment the foster carer has made to them as a permanent member of their family. If a Special Guardianship Order is made the child is no longer ‘looked after’ and the carers have parental responsibility for the child or young person. However the local authority still has responsibility to provide special guardianship support services so that a range of support services including financial support will be available to support such placements.

1.3 **Parental responsibility**

A Special Guardianship Order confers parental responsibility on the Special Guardian to the exclusion of any others with parental responsibility. The Special Guardian has responsibility for all the day-to-day decisions in relation to that child. The aim is to provide legal stability for the child whilst the parents remain the child’s legal birth parents. The Special Guardian can make all the decisions for that child except:

* Where the law requires the consent of more than one person with parental responsibility i.e. sterilisation.
* Agreement to adoption.
* Removal of the child from the U.K. for more than 3 months without leave of the court.
* Change the child’s name without the leave of the court.

1.4 The Special Guardianship Order remains in force until the child is 18 years old and should provide for a strong foundation for a lifelong relationship between the child and the Special Guardian. However, Special Guardianship Orders can be varied or discharged on the application of the Special Guardian, the local authority in whose name a Care Order was in force with respect to the child before the Special Guardianship Order was made, anyone with a Residence Order for the child before the Special Guardianship Order was made and, with leave of the court, the child’s parents or guardians, any step parent who has parental responsibility or had it immediately before the Special Guardianship Order was made, and the child. The court will only grant leave if there has been a significant change in circumstances since the Order was made.

**2. Legal Framework**

2.1 Most applications will be private law applications but the court may also make a Special Guardianship Order in any family proceedings concerning the welfare of the child if they consider an Order should be made. This applies even where no application has been made and includes adoption proceedings.

2.2 When considering whether to make a Special Guardianship Order the welfare of the child will be the court’s paramount consideration and the welfare checklist in Section 1 of the Children Act 1989 is applied.

2.3 Applications can be made individually or jointly by two or more people, and applicants have to be over 18 years old. The parent of a child cannot become a Special Guardian. The court may make a Special Guardianship Order in respect of the child on application from:

* Any guardian of the child.
* A foster carer with whom the child has lived for one year immediately preceding the application.
* Anyone who holds a Residence Order or who has the consent of all those with a Residence Order.
* Anyone with whom the child has lived for three years out of the last five years.
* Where the child is in the care of the local authority, anyone who has the consent of the Local Authority.
* Anyone with consent of all those with parental responsibility.
* Anyone else including the child with leave of the court.

2.4 Before making a Special Guardianship Order the court must consider whether to vary or discharge any Section 8 Order, this could include contact, a Residence Order, or Child Arrangements Order. The court should also consider whether or not a Contact Order should be made at the same time as the Special Guardianship Order.

2.5 Financial support, where deemed appropriate, is intended to supplement existing means of support available to Special Guardians who must be given advice of entitlements to benefits, tax credits and allowances. These, and family income, will be taken into account when considering whether financial support should be paid and at what level.

2.6 Financial need should not be the sole reason for arrangements under the above orders failing to survive. Financial support, in accordance with the Regulations, will be paid to enable suitable arrangements to be made where such arrangements could not be sustained without ongoing financial support.

2.7 Special Guardianship Regulations 2005 specify the conditions for providing support services including the provision of financial support.

(see <https://www.gov.uk/government/publications/special-guardianship-guidance>)

2.8 In Regulation 5 a distinction is made between ongoing financial support (financial support that is paid on a regular basis) which was agreed before the Special Guardianship Order was made and other support services. The assessment and provision of such financial support will remain the responsibility of the Local Authority who originally agreed it for as long as the family in question qualify for payments. Three years after the SGO is granted all other support needs will become the responsibility of the Local Authority where the child lives.

**3. Policy**

3.1 Children or young people can be made subject to a SGO through a range of circumstances. Northamptonshire’s Special Guardianship Support is based on the principle embodied in Paragraph 65 of the Special Guardianship Guidance:

*“In determining the amount of any ongoing financial support, the local authority should have regard to the amount of fostering allowance which would have been payable if the child were fostered. The local authority’s core allowance plus any enhancement that would be payable in respect of the particular child, will make up the maximum payment the local authority*

*could consider paying the family. Any means test carried out as appropriate to the circumstances would use this maximum payment as a basis”.*

There are two policies that relate to Special Guardianship Orders:

1. Policy for the payment of Special Guardianship allowance for children in care (this policy)
2. Policy for the payment of allowance for adoption, special guardianship, residence and child arrangement orders (for children not currently looked after)

Northamptonshire County Council will provide financial and other support services to a Special Guardian for the purpose of supporting the permanent placement of child.

This policy will only apply to all new applications for SGO made after the date of this policy. If Special Guardians feel that their circumstances or needs have changed then they can request a new assessment of needs under Regulation 11.

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If the financial support is to be paid as a regular allowance then it must be reviewed annually and may be means tested. Northamptonshire may choose to pay an allowance greater than the means tested amount but the annual review and means test must still take place. Any decision to disregard the results of the means test must be made by the Strategic Manager. The reasons for doing so and the decision making process must be comprehensively documented and based on the child’s needs. However, the means test must still take place annually to ensure effective oversight and to comply with legislation.

3.2 Circumstances in which financial support is payable

Following an Assessment of Need, consideration for financial support will be given under the following circumstances:

a) Where it is necessary to ensure that the special guardian or prospective

special guardian can look after the child.

b) Where the child needs special care which requires greater expenditure of

resources because of illness, disability, emotional or behavioural difficulties,

or the continuing consequences of past abuse or neglect. Payment under

this category is intended where the child’s difficulties are significant and long

term.

c) Where the local authority consider that it is appropriate to contribute to any

legal costs, including court fees, of a special guardian or prospective special

guardian associated with:-

i) the making of a Special Guardianship Order or any application to vary

or discharge such an order

ii) an application for an order under Section 8 of The Children Act (1989)

(a Contact Order, a Prohibited Steps Order, a Residence Order or a

Specific Issue Order)

iii) an order for financial provision to be made to or for the benefit of the

child.

d) Where the Local Authority consider it appropriate to make a contribution to

the expenditure necessary for the purpose of accommodating and

maintaining the child, including the provision of furniture and domestic

equipment, alterations to and adaptations of the home, provision of means of

transport, and provision of clothing, toys and other items necessary for the

purpose of looking after the child.

e) Where support is needed to meet recurring costs in relation to Contact.

**3.3 Applications in respect of looked after children**

For most children looked after by Northamptonshire County Council for some time, the decision for foster carers to apply to become Special Guardians would have been made at the LAC review and foster carers should discuss such a plan fully with their supervising social worker and worker for the child. The preparation of the Special Guardianship report will need to be undertaken jointly by the social worker for the child and the supervising social worker for the foster carers.

A meeting should be convened by the fieldwork Team Manager or Practice Manager to plan for the preparation of the report and consider the Special Guardianship support need and Plan. There is a format for the Special Guardianship Support Plan, which is similar to that completed in relation to adoption support. It is important that foster carers are fully in agreement with the proposed Special Guardianship Support Plan.

If the plan for Special Guardianship is supported by the Local Authority, foster carers will be supported financially with the cost of the application and access to legal advice (to a maximum total cost of £2000.00). It will be important to ensure that carers have full information about Special Guardianship and are supported through their application process. It is the responsibility of the social worker for the child to discuss such a plan with the birth parents and advise them fully about special guardianship and the need to access legal advice. There is a leaflet available from the local authority for birth parents which includes information about options for children who cannot live with their birth parents.

**Special Guardianship support services**

3.5 The legislation in respect of Special Guardianship also requires the local authority to make provision for Special Guardianship support services. These are defined as:

* Financial support.
* Services to enable Special Guardians, children subject to SGOs or parents of children subject to SGOs to meet to discuss issues relating to Special Guardianship.
* Assistance including mediation in relation to contact.
* Therapeutic services for the child.
* Support services for the Special Guardian including training.
* Counselling, advice and information.

The Guidance states that Special Guardianship support services should not be seen in isolation from mainstream services and these families should be supported and encouraged to access these services or claim any state benefits that they may be entitled to.

**Eligibility for leaving care services**

3.6 Children who were looked after immediately prior to becoming subject to a Special Guardianship Order will also still be eligible for Leaving Care Services as a Qualifying Young Person in that they will qualify for advice and assistance under section 24(1) of the Children Act 1989, as amended by the Children (Leaving Care) Act 2000 and the Adoption & Children Act 2002. This is providing that the child:

1. Has reached the age of 16 but not the age of 21
2. If less than eighteen years old, has a Special Guardianship Order in force.
3. If eighteen years old or above, had a Special Guardianship Order in force when they reached that age, and
4. Had been looked after by a local authority immediately before the making of the Special Guardianship Order.

**Special Guardianship Support Plan**

3.7 A Special Guardianship Support Plan will need to be considered and drawn up for all children who are looked after and subject to a Special Guardianship Order application. It will be important to ensure that there is no financial disincentive to foster carers where they are supported by the Local Authority going on to offer a secure placement to the child in their care via Special Guardianship.

Regulation 11 provides that the following people ***must*** receive an assessment at their request for situations where the child involved is currently looked after or was looked after immediately prior to the making of a Special Guardianship Order:

* The child.
* The Special Guardian or prospective Special Guardian.
* The parent.

3.8 The process involved in drawing up a Special Guardianship Support Plan is similar to that involved with an Adoption Support Plan. The Special Guardianship Support Plan will need to be completed with the prospective Special Guardians providing written confirmation to Children Services that they accept the plan prior to the court hearing in respect of their application. The regulations suggest that a period of up to 28 days should be provided to the prospective Special Guardians to make any representation in relation to the plan. Details of sources of independent advice and advocacy should also be provided to the Special Guardianship with the plan. The plan will detail the outcome of the assessment, the services to be provided, the time-scales for the provision of the services and the procedure for review. It will be essential to identify within the plan who will be the named worker to monitor the provision of the services as detailed in the plan.

**Financial support**

3.9 The criteria and prescribed procedures for the provision of financial support are set out in Regulations 6–10 of the Special Guardianship Support Regulations 2005. Regardless of whether the child was looked after or not immediately prior to the making of the SGO, these regulations will form the criteria used to decide whether financial support will be paid, and social workers must therefore be clear which element of the regulations is applicable if a case for financial support is being proposed.

In considering a case for financial support, social workers should consider:

* Whether the need can be met from universal benefits/tax credits.
* Whether the need can be met by other services/equipment or payment in kind.
* Whether the need can be met by a one-off payment or series of short-term/time limited payments.

3.10 The prospective Special Guardians will need to complete a financial assessment in the same way that prospective adopters do in relation to an Adoption Allowance or those applying for a Residence Order Allowance. The social worker for the child will need to seek agreement at Strategic Manager level to confirm the allowance to be paid.

3.11 The need for financial support will be determined using the Assessment of Need and the DfE standardised means test. This includes providing the prospective SGO carer with a copy of the draft support plan and an opportunity to comment on the draft plan before it is submitted to court.

3.12 The rates for Special Guardianship allowances in relation to children who were looked after will reflect any Foster Care Allowance that was paid prior to the granting of the Special Guardianship Order, less any benefits that can be claimed. Where the following circumstances apply the outcome of the means test will be disregarded at the time of the SGO application and until the child reaches 18 or the financial support ends for a reason detailed in 3.15 below:

* where the child has been looked after for more than 12 months, and
* if the foster carers are connected persons that they have received full approval to care for the specific child, and
* any care proceedings have concluded
* where the LAC review agrees the plan of Special Guardianship and the local authority is recommending to the court that a Special Guardianship Order is granted

Appendix A outlines the level of allowance that is payable in these circumstances. Special Guardians will also be entitled to claim Child Benefit and Tax Credits, if eligible, when the child is no longer looked after.

3.13 There may be circumstances that would also warrant a single payment to support a placement, and agreement to such a payment needs to be made at Strategic Manager level. The plan needs to detail the basis upon which financial support is determined, whether the financial support will be paid in the form of a regular allowance, how much the financial support will be and for what period it covers.

3.14 The Special Guardian will need to complete a financial statement on an annual basis and agree to inform Children’s Services immediately if she/he changes her address or the child no longer lives with them, dies or there are any changes in the circumstances of the child as laid out in the Special Guardianship regulations. This applies even if there is agreement that the outcome of the financial statement is to be disregarded.

**Ending of Financial Support**

3.15 Financial support will end in the following circumstances:

* On the end date of any specified payment period.
* When a child reaches age 18, unless he/she continues in full-time education or training when support may continue until the end of the course of education or training being undertaken, subject to any other financial support the child may be entitled to receive.
* Where a child ceases full-time education or training and commences employment.
* Where a child qualifies for income support or job seekers allowance in his/her own right.
* Where circumstances have changed significantly and the criteria are no longer met.
* If a child leaves the carer’s home and this is regarded as a permanent departure. Temporary absences do not apply, e.g. boarding school, hospital and respite care.
* If the child dies.

**Other support services**

3.16 The Special Guardianship Order Support Plan highlights the key dimensions to consider in relation to the child and their Special Guardians. It will need to focus on, for example, support in relation to any health or educational needs the child may have as well as on support in relation to contact arrangements. It will be important to consider at that stage who will continue to have responsibility for the support and supervision of future contact arrangements and like the rest of the plan will need to be kept under regular review. It is expected that Special Guardians will have the resources to manage the child’s contact with family and friends after the Special Guardianship Order is made. However, where the child has been looked after prior to the making of the order and where there are particular complexities or risk, the local authority may provide short term assistance to support or facilitate contact. The plan will also need to detail all other ongoing support that will be made available from Children’s Services. This could include the continued provision of a social worker to support the placement, access to support groups and training services from the Fostering & Adoption Service.

3.17 It will be necessary to liaise with the appropriate health or education services during the assessment of the need for support services as the plan may need to contain details of services provided by bodies other than Children’s Services. Children who were looked after by Northamptonshire County Council who go on to be subject to Special Guardianship will continue to receive priority for access to specialist services as appropriate from the LAC Team at the Child & Adolescent Mental Health Services (CAMHS). The Support Plan will need to include any specific services being provided to the parent of a child subject to Special Guardianship.

3.18 If the child is placed out of county the responsibility for Post Order Support transfers three years after the Order is granted to the Local Authority in which the child is living. This does not apply to financial support or support with contact arrangements which are specified in the Special Guardianship Order Support Plan submitted to court with the Special Guardianship Order application.

**Review of the Special Guardianship Support Plan**

3.19 Financial allowances will be reviewed annually unless there is any relevant change in circumstances sooner or if the Support Plan specifically identifies an alternative review date. The Annual Review will be triggered by the Finance section sending out the annual financial statement. The Strategic Manager for Corporate Parenting will maintain oversight of all the Special Guardianship support payments. The recipients of the Special Guardian Allowance **must** notify financial services if their circumstances change at any time.

3.20 The Local Authority is required to regularly review the Special Guardianship Support Plan. This should take place at least annually or more frequently if there is a change in the person’s circumstances. Any change to the plan must be notified in writing to the Special Guardian who is given opportunity to make any representations about the change to the plan. The Team Manager for the team with the named key worker for the plan must ensure that the review of the plan takes place. Reviews would normally be chaired by the appropriate Team Manager or Practice Manager for the named key worker within the plan, i.e. usually a Team Manager or Practice Manager from within the Post Order Support Service. The manager chairing the review will ensure that the review of the plan and any subsequent changes are sent out in a timely manner and any representations about the plan passed on to the appropriate Team Manager or Service Manager to consider.

**Varying or ending the Special Guardianship Order**

3.21 While Special Guardianship Orders are considered as secure as adoption in respect of permanence, they are considered more suitable in terms of friends or family taking responsibility for a child. However, unlike Adoption Orders, Special Guardianship Orders can be varied or ended if circumstances change significantly.

3.22 People who can apply to end a order include:

* The special guardian.
* The Local Authority named in a care order relating to the child.
* Anyone with a Residence Order which related to the child before the

Special Guardianship Order was made.

And with the courts permission:

* The child’s parents or guardians.
* A step-parent who has parental responsibility.
* Anyone who had parental responsibility immediately before the Special Guardianship Order was made.
* The child (if the court is satisfied that the child has sufficient understanding).

**Appeals Process**

3.23 If the Special Guardian is dissatisfied with the amount of financial support offered they should write to the Strategic Manager – Corporate Parenting outlining the reasons for appeal. They will receive a response within ten working days. If they remain dissatisfied with the response they should follow the complaints procedure.

Appendix A

Special Guardianship allowances in relation to children who were looked after by Northamptonshire County Council

The Special Guardianship Allowance will be based on the Fostering Allowances received for the child at the time of the order (less any benefits for the child) to ensure that the Special Guardian will not be financially disadvantaged when a Special Guardianship Order is made. The allowance is not subject to income tax as of tax rules on 5/4/2016.

Financial support will be paid to foster carers in the following circumstances:

* Where the decision to award an allowance is based on the needs of the child and has been agreed before the Special Guardianship Order is made. In all cases of Special Guardianship Order the details of the proposed allowance must be included in the Special Guardianship Order Support Plan.
* Where financial support will enable children to move out of Local Authority care.

**Special Guardianship Allowance to Local Authority (including Kinship) Northamptonshire Foster Carers:**

Where the following circumstances apply the means test will be disregarded and payments will be at an amount equivalent to the fostering allowance received at the time of the order plus the current skills payment received, until the Special Guardianship Orders ends:

* where the child has been looked after for more than 12 months, and
* if the foster carers are connected persons that they have received full approval to care for the specific child, and
* any care proceedings have concluded
* where the LAC review agrees the plan of Special Guardianship and the local authority is recommending to the court that a Special Guardianship Order is granted

All allowances will be subject to the deduction of Child Benefit and Child Tax Credit at the rate payable for the child, where carers are eligible.

Any other payments relating to foster care e.g. holiday/birthday/festivals etc. will not payable under these arrangements

Any total amount of allowance paid (comprising Special Guardianship Allowance and benefits) will not exceed the amount previously received through fostering.

**Special Guardianship allowance to Independent Fostering Agency foster carers:**

Where the following circumstances apply the means test will be disregarded and payments will be at an amount equivalent to the fostering allowances received at the time of the order, paid by the agency directly to the carer until the Special Guardianship Orders ends:

* where the child has been looked after for more than 12 months, and
* where the LAC review agrees the plan of Special Guardianship and the local authority is recommending to the court that a Special Guardianship Order is granted

All allowances will be subject to the deduction of Child Benefit and Child Tax Credit at the rate payable for the child, where carers are eligible. Any other payments relating to foster care e.g. holiday/birthday/festivals etc. will not be payable under these arrangements.