

## **Special Guardianship Orders Policy and Procedure**

### **RELEVANT LEGISLATION**

**Children Act 1989 as amended by the Adoption and Children Act 2002**

**The Children Leaving Care Act 2000**

**The Special Guardianship Regulations England 2005 (as amended by the Special Guardianship (Amendment) Regulations 2016)**

**Special Guardianship Guidance (Amendments 2016)**

### **RELATED GUIDANCE**

This policy should be read in conjunction with **Permanence Planning Guidance** and **Care Planning Guidance**.

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### **1. Introduction and Background - Special Guardianship Order**

Special Guardianship Orders (SGO) was introduced to provide, 'an alternative legal status for children that offers greater security than long term fostering but without the absolute legal severance from the birth family that stems from an adoption order. The updated guidance includes an emphasis on special guardianship providing a firm foundation on which to build a lifelong permanent relationship between the child and their carer' (Special Guardianship Guidance DFES 2005 (Amended 2016)).

It is a legislative route to permanence for children for whom adoption is not appropriate. The special guardian will have parental responsibility for the child and may exercise this to the exclusion of all others with parental responsibility, apart from another special guardian. There are exceptions to the decisions a special guardian can make (See **Section 3, Parental Responsibility**).

The Special Guardianship process is subject to detailed regulations and these must be complied with.

A Special Guardianship Order offers greater legal certainty to a placement than a Child Arrangements Order.

A Special Guardianship Order made in relation to a Looked After Child will discharge the Care Order and the Local Authority will no longer have Parental Responsibility. However a Care Order made after a Special Guardianship Order will not automatically revoke the Special Guardianship Order although the Special Guardian's exercise of Parental Responsibility will be restricted as the Local Authority will have primary responsibility for decision making under the Care Order. A Local Authority with a Care Order can make an application to discharge a Special Guardianship Order.

## **2. Who May Apply?**

Applications for Special Guardianship may be individual or joint applicants. Joint applicants do not need to be married. Special Guardians must be 18 or over.

The following persons may apply:

- Any guardian of the child;
- Where the child is subject of a Care Order or an Interim Care Order, any person who has the consent of the Local Authority;
- A local authority foster carer who is a relative of the child or with whom the child has lived for one year immediately preceding the application (even if the Local Authority does not consent) [1];
- Anyone who is named in a Child Arrangement Order as a person with whom the child is to live;
- Anyone who has the consent of each person named in a Child Arrangements Order as a person with whom the child is to live;

- Anyone with whom the child has lived for three out of the last five years providing that the child has not ceased to live with the proposed applicant for more than 3 months before the making of the application;
- Anyone who has the consent of all those with Parental Responsibility for the child.

Any other person (including the child and other than a parent) may apply for a Special Guardianship Order if he has obtained the leave of the court to make the application.

The parents of a child may not apply to become their own child's Special Guardians.

[1] A person who is, or was at any time within the last 6 months, a local authority foster parent of a child may not apply for leave to apply for an SGO unless (s)he has the consent of the local authority, or (s)he is a relative of the child or the child has lived with him for at least one year preceding the application.

### **3. Parental Responsibility**

The Special Guardian will have Parental Responsibility for the child and will have responsibility for the day-to-day decisions about caring for the child to the exclusion of anyone else who might have Parental Responsibility (apart from another Special Guardian).

The child's parents will continue to hold Parental Responsibility but their exercise of it will be limited. The parents will, however, retain the right to consent or not to the child's adoption or placement for adoption.

In addition there are certain steps in a child's life which require the consent of every person with Parental Responsibility, for example:

- The change of surname of the child;
- The removal of the child from the United Kingdom for longer than three months;
- The sterilisation of a child;
- Marriage of a child aged between 16-18 years.

#### **4. The Circumstances in which a Special Guardianship Order may be made**

The Court may make a Special Guardianship Order in any family proceedings concerning the welfare of the child. This applies even where no application has been made and includes adoption proceedings.

Any person making an application for a Special Guardianship Order must give 3 months' written notice to their local authority of their intention to apply. In relation to a Looked After Child, the notice will go to the local authority looking after the child. In all other cases, the notice will then have a duty to provide a report to the Court. It is imperative that the child's social worker is notified at the earliest possible opportunity in instances where a notification for a Special Guardianship Order application will be made.

The only exception to the requirement for 3 months' notice is where the Court has granted leave to make an application and waived the notice period.

When Tameside MBC has received notice from an applicant or a request for a report from the Court, it should send written information about the steps it proposes to take in preparing the report to the prospective Special Guardian and the parents of the child in question. This should include information about Special Guardianship support services and how to request an assessment of needs for support. Prospective carers should also be provided with the leaflet special guardianship explained

#### **Counselling for SGO Applications**

Counselling should commence prior to any application being lodged with the court so that alternative orders under the Children Act 1989 or the Adoption and Children Act 2002 can be explored fully with the child, where appropriate, and the potential special guardian. The applicant should be advised to seek legal advice.

The purpose of counselling is to ensure that the nature and implications of Special Guardianship are understood fully by the child, the special guardian and the birth parents and that their wishes and feelings considered.

As part of the counselling process the prospective special guardians should be made aware of the need to obtain the personal details of their family for inclusion in the Regulation 21 report for the court. The prospective special guardians should be seen at home both jointly and separately.

The child should also be seen in the company of the applicants so that a view can be obtained regarding the family relationships. Any other residents of the home should be interviewed.

The child needs to know and have an understanding of his/her birth origins as well as to be aware of the implications of special guardianship. She/he should be seen alone if the child is old enough (e.g. normally over 5 years) and it is important to note that even young children can understand the difference between a 'parenting' parent and a 'birth' parent. It is essential that the child's views are recorded and taken into account. Where a child has strong bonds with the birth parents it is crucial that this matter is given careful consideration and contact issues addressed. Counselling with the birth parent or anyone who has parental responsibility for the child is available. Any birth parent not agreeing to the application should be advised to engage a solicitor as soon as possible.

Any action/counselling undertaken must be fully recorded on the case records.

## **5. Special Guardianship Order Applications Process**

### **5.1 Children in Care Proceedings**

If a report is requested by the court during care proceedings, the Team Manager should immediately instruct the Social Worker to commence an SGO assessment in partnership with a SGO assessor.

As part of the permanency planning process and during the court proceedings it is the responsibility of all parties to consider permanent alternative care options within the child's network. It is best practice to consider undertaking a joint viability assessment with the SGO assessor (based within the Fostering Team) where there are considered to be risks or vulnerabilities in the proposed arrangements at the onset. In Tameside, where there are safeguarding concerns, we would not support a Private Law Application for a Special Guardianship Order in lieu of Care Proceedings.

There may be circumstances where the court gives leave to an application from a connected person who the local authority have not deemed as suitable through a Viability Assessment – (Please refer to **Section 2, Who May Apply?**). The local authority must then respond by progressing these assessments.

Where an application is lodged during court proceedings the time limit for completion of the report will be set by the court. **It is therefore essential that a full SGO Assessment is commenced as soon as possible.**

## **5.2 CAFCASS**

In any proceedings the court will appoint a Children's Guardian or seek the views of CAFCASS. This person will be independent of the agency. Please see **Appendix 5: SGO Timeline and Process.**

## **5.3 Children Looked After**

### **Referral Following Statutory Review**

Special Guardianship (Amendments) Regulations 2016 state that a plan for permanence must always be considered by the second review. A permanency planning meeting will take place within four weeks of the first statutory review. The review must consider any action necessary to provide permanence for the child and the question of ongoing contact with people who have parental responsibility for the child and significant others.

Where the child is placed with a foster carer, who wishes to make a SGO Application, the completion of the court report will be undertaken jointly between a Supervising Social Worker and the Social Worker for the child. Each worker will take responsibility for recording any documents on their respective electronic case record.

Where the local authority is not supporting the SGO application by a foster carer early advice should be sought from the Service Manager (Fostering), if a foster carer wishes to proceed with an unsupported application.

In this situation foster carers who have had the care of the child in placement with them for a year can apply for a Special Guardianship Order, once they give 3 months' notice of their intention to do so. In these circumstances a foster carer would be requested to give a formal notice of intention for a SGO to the Fostering or Fostering Social Worker and legal department.

## **5.4 Other Arrangements**

In addition, this section also applies to children within Tameside, which may include the following:

Subject to a protection plan where threshold to issue proceedings has not yet been met;

- Subject to CiN plan;
- Open to Youth Services;
- Private fostering;
- Children who are not known to Tameside MBC.

Where the Local Authority are involved, care planning will be regularly reviewed, and part of the planning process may be to determine that an SGO application may be the most appropriate permanent option for the child. As outlined in **Section 2, Who May Apply?** there may be applications from those who have an automatic entitlement to apply although this may not necessarily be the agreed care plan of the local authority.

The prospective special guardian must write to the local authority's legal department (where applicable) notifying them of their intention to apply for SGO for a Tameside child.

The notice regarding the intention to apply for a Special Guardianship Order may come from the applicant(s) or from the solicitor acting for the applicant(s). It may not be necessary for the applicants to engage a solicitor where the birth parent(s) are in agreement with the plan. In cases where an application is likely to be contested or the whereabouts of the legal birth parents are unknown then the applicants are advised to engage a solicitor (see **Section 13, Payment of Legal Fees**).

The legal department will notify the Child's Social Work Team who will work together to complete the SGO assessment within the three month timescale.

In accordance with Regulation 20, the child's social workers should notify children and young people in writing of the proposed plan for the Special Guardianship Order, taking into consideration age and understanding. Otherwise, written notification may be given to the special guardian, prospective special guardian or to the adult that the local authority consider most appropriate.

## **6. Special Guardianship Order Report**

### **Regulation 21 Report**

The information required for a local authority report is the same for all Special Guardianship Order applications. The Schedule is lengthy and the details required are prescriptive (see **Appendix 1: Regulation 21 Report Schedule**).



A SGO leaflet should be sent to the prospective special guardian and the parents of the child in question outlining the steps the local authority proposes to take in preparing a report and include information about support services and assessment of needs.

The child's social worker will need to complete a Regulation 21 court report on the matter in conjunction with a Supervising Social Worker from the Fostering team. The Social Worker will complete the sections on the child and birth family and the Supervising Social Worker on the carers. A recent (within 6 months if under 5, within 12 months if over 5) **Child's Needs Assessment** should inform the preparation of the Regulation 21 court report.

As part of the assessment process, the Local Authority **must** report on the following The Special Guardianship (Amendment) Regulations 2016:

- Any harm which the child has suffered;
- The risk of any future harm to the child posed by the child's parents, relatives or any other person the local authority consider relevant;
- A description of the child's personality, his/her social development and his/her emotional and behavioural development and any related current needs or likely future needs.

In relation to the prospective Special Guardian or Guardians:

- An assessment of the nature of the prospective Special Guardian's current and past relationship with the child;
- An assessment of the prospective guardian's parenting capacity, including:
  - i. Their understanding of an ability to meet the child's current and likely future needs, particularly, any needs the child may have arising from harm that the child has suffered;
  - ii. Their understanding of, and ability to protect the child from any current or future risk of harm posed by the child's parents, relatives, or any other person the local authority consider relevant, particularly in relation to contact between any such person and the child;
  - iii. Their ability and suitability to bring up the child until the child reaches the age of eighteen.

## **Assessment**

An assessment must be made as to the suitability of the applicants to become a special guardian and cover all requirements of the revised Regulation 21 report (2016) in order that a recommendation can be made to the court.

The assessment report will be completed by the Child's Social Worker in conjunction with a Fostering Social Worker. The report must be authorised by a Service Manager.

## **References and Statutory Checks**

The Fostering Team are responsible for arranging statutory references including a Disclosure and Barring Service (DBS) check, health authority and local authority checks. The Supervising Social Worker will interview three personal references that the applicants have named. Two of these should be friends and not related to the applicant. The third reference should usually be a member of the extended family. The other requirements for referees laid out in the reference policy for adopters should be adhered to as a matter of good practice.

## **Health History**

### **The Child**

The Social Worker should summarise the information from the last Health Needs Assessment to incorporate into the Regulation 21 Report.

### **The Applicants**

Where the foster carer is known to the department the supervising social worker should provide the medical advisor's summary of their most recent medical or provide an updated medical where this is needed (where the medical is more than 2 years old). They will forward this to the social worker for inclusion in the report. Where the applicants are not known to the department and the request for special guardianship has come during proceedings the applicant should follow the same process for obtaining a medical as for prospective adopters. Once a summary is received from the GP then this should be sent to the Supervising Social Worker for inclusion in the Regulation 21 report.

## Contact

Issues of contact should be discussed fully with all parties. Such arrangements may be made informally if all parties are in agreement. However there may be child protection concerns and in these circumstances consideration will be given to safe contact arrangements, based on the child's assessed needs, In the event of a dispute it may be necessary to consider the recommendation of other orders to run alongside the Special Guardianship Order.

## 7. Special Guardianship Support

In accordance with statutory requirements, the local authority must make provision for a range of Special Guardianship support services.

Special Guardianship support services are defined as:

- Financial support;
- Services to enable children, Special Guardians and parents to discuss matters relating to the arrangements for the child;
- Assistance including mediation in relation to contact between the child and their parents, relatives or significant others;
- Therapeutic services for the child;
- Assistance to ensure continuance of the relationship between the child and the Special Guardian, including training to meet any special needs of the child, respite care, and mediation;
- Counselling, advice and information;
- Special Guardianship Support Plans will be subject to the approval of the Service Manager Family and Friends.

Support services should not be seen in isolation from mainstream or specialist services and it is important to ensure that families are assisted in accessing mainstream services and are aware of their entitlements to tax credits and universal benefits.

Where the child was previously Looked After, the Local Authority that looked after the child has responsibility for providing support for the first two years after the making of a Special Guardianship Order. Thereafter the Local Authority where the Special Guardian lives, if in the jurisdiction of England, will be responsible for the provision of any support required save

for the assessment and provision of financial support which remains with the Local Authority who originally agreed it where the decision to provide that support was made before the making of the Special Guardianship Order.

If a child was not a Looked After child, the local authority where the Special Guardian lives has the responsibility for completing any assessment for Special Guardianship support and determining what, if any, provision will be made.

## **8. Entitlement to Assessment for Special Guardianship Support**

Where the child is Looked After or was Looked After immediately prior to the making of the Special Guardianship Order, the following people **MUST** receive an assessment at their request:

- The child;
- The Special Guardian or prospective Special Guardian;
- A parent (but only in relation to their need for support with contact and/or discussion groups).

Where the child is not Looked After or was not Looked After immediately prior to the making of the Special Guardianship Order, the following people **MAY** be offered an assessment of their need for Special Guardianship support services:

- The child;
- The Special Guardian or prospective Special Guardian;
- A parent.

In all cases, whether the Special Guardianship child is looked after or not, the following people also **MAY** be offered an assessment of their need for Special Guardianship support services:

- A child of the Special Guardian;
- Any person with a significant ongoing relationship with the child.

If a local authority decides not to assess in cases where they have discretion as above, they must notify the decision in writing, including reasons for the decision, to the person making the request.

This will be done by the Service Manager. The applicant has the right to make a representation to the local Authority within 28 days, or sooner if applicable, regarding the decision not to provide an assessment for Special Guardianship support.

## **9. Assessment for Support**

The assessment should be based on the child's assessment of need and include the following:

- The developmental needs of the child;
- The parenting capacity of the Special Guardian or prospective Special Guardian;
- Family and environmental factors for the child;
- Comment on how life with the Special Guardian might be for the child;
- Any previous assessment of the child or Special Guardian that is relevant;
- The needs of the Special Guardian or prospective Special Guardian and their family;
- The impact of the Special Guardianship Order on the relationship between the child, parent and Special Guardian.

Special Guardianship Support will be subject to the approval of the relevant Head of Service.

The assessment will be recorded on the Special Guardianship Support Plan if the support proposed is to be offered on more than one occasion.

At the end of the assessment and once the necessary approval has been obtained, the social worker must inform the person requesting provision in writing of its outcome, including:

- Information about the outcome of the assessment and the reasons for it;
- Where it relates to financial support, the basis on which this is determined with the amount and conditions attached;
- The services (if any) that the Local Authority proposes to provide; which may include therapeutic life story work, play therapy, attachment based support. From the 1st of April 2016, special guardians may apply for the Adoption Support Fund for these types of services for children and young people who were previously looked after prior to the Special Guardianship Order. The Adoption Support Fund is subject to

regulatory review by the Department of Education, which may result in changes to the eligibility criteria. <https://www.gov.uk/guidance/adoption-support-fund-asf>

## **10. The Special Guardianship Support Plans**

Where an assessment identifies the need for ongoing support services, a Special Guardianship Support Plan must be completed.

Other agencies, such as education and health, should be consulted about the contents of the Plan if the Plan contains provision relevant to their agency.

The Plan should set out:

1. The services to be provided;
2. The objectives and criteria for success;
3. Timescales;
4. Procedures for review;
5. A named person to monitor the provision of services in accordance with the Plan.

Special Guardianship Support will be subject to the approval of the relevant Head of Service.

Once the necessary approval has been obtained, the social worker must send the proposed plan to the person requesting support, and allow 28 days for that person to make representations about the proposed plan. The social worker should also give information to the person concerned about who to contact to obtain independent advice and advocacy.

Where representations are received, they should be referred to the Head of Service to amend or confirm the Plan. The social worker must then write to the person concerned setting out the final Plan.

## **11. Review of Special Guardianship Support Plans**

Special Guardianship Support Plans must be reviewed taking into account the following:

- Any change in the person's circumstances which may affect the provision of Special Guardianship support services;
- At such stage in the implementation of the plan as they considered appropriate;
- In any event, at least annually.

Financial support must be reviewed at least annually and Special Guardians must provide annual financial data. See **Section 12, Financial Support**.

Special Guardians must advise the Local Authority immediately in writing if there is a change in their circumstances either financially or otherwise and the Local Authority will consider if it is appropriate to undertake a review of the support plan before the next annual review.

Where there is no change or a minor change in circumstances a review can be completed without direct contact with the applicant. However, if there were a substantial change of circumstances, e.g. a significant change in the behaviour of the child, it would normally be necessary to conduct a new assessment of the child's needs (**Child's Assessment of Need form**). The Local Authority may also request an update of the assessment of child's needs when reviewing financial support.

If the local authority decides to vary or terminate the provision of support after the review, notice in writing must be given and the person concerned should be given 28 days to make representations.

If a Special Guardian wishes to resign from being the special guardian, the special guardian, or person requesting resignation / termination must apply to the Court.

Once a child becomes 18, support will be in line with their Leaving and After Care entitlement except where financial support is payable where the child is engaged in full time education/training and the Local Authority agrees to continue support until the end of the course or training the child is then undertaking. For the avoidance of doubt this is secondary education or equivalent and will not include university or further training entered into after the child has turned 18. Any support for such course /study will be made in line with the Entitlement to Leaving Care Services (see **Section 15, Entitlement to Leaving Care Services**).

## **12. Financial Support**

### **Eligibility for Financial Support**

Financial support may be paid to:

- Facilitate the arrangements for a person to become a Special Guardian of the child where the local authority considers this would be beneficial to the child's welfare; or
- To support the continuation of such arrangements after a Special Guardianship Order is made.

Such support may only be paid in the following circumstances:

- a. Where it is necessary to ensure that the Special Guardian can look after the child;
- b. Where the local authority consider that the child needs special care which requires a greater expenditure of resources than would otherwise be the case because of his illness, disability, emotional or behavioural difficulties or the consequences of his past abuse or neglect; and the applicants meet the criteria that suggests an allowance should be payable.

The Local Authority may also provide financial support subject to any other conditions it considers are appropriate, including timescales within which, and purposes for which, any payment of financial support should be utilised. This may include a discretionary payment which is subject to review at any time. Discretionary payment can only be approved by a Head of Service.

Any retrospective claim to Tameside MBC for financial support where the conditions are met, may only be backdated to the date of the initial request for assessment or a subsequent review date.

If Special Guardians live outside Tameside (including outside the jurisdiction of England) financial support can only be provided if the child(ren) concerned are or were looked after by Tameside and financial support was agreed at the time the order was made. If this is not the case Special Guardians should request an assessment for financial support from the local authority in whose area they live.

For Special Guardians who qualify for financial support but live outside of the jurisdiction of England, when calculating whether payments will be made, consideration will be given to the local cost of living in the jurisdiction in which the Special Guardian resides. Payments will either be the maximum sterling allowance calculated or if the cost of living in the jurisdiction is lower than in England, payments may be lower.

Special Guardians must be helped to access any benefits to which they are entitled; this will usually include child benefit and tax credits such as Child Tax Credit and Working Tax Credit. It may also include disability or other benefits on behalf of themselves or the child. Advice and consultation will be made available to Special Guardians and this may include sign posting to relevant agencies that may support applicants with accessing relevant entitlements.

The Local Authority must take into account any other grant, benefit, and allowance or resource available to the person in respect of his needs as a result of becoming a Special



Guardian of a child. Financial support from the Local Authority will not duplicate any other payment available to the Special Guardian.

As well as taking into account the Special Guardian's financial resources the Local Authority must also take into account the amount required by the Special Guardian in respect of his/her reasonable outgoings and commitments (excluding outgoings in respect of the child) and the financial needs and resources of the child except where the Local Authority is considering providing financial support in respect of legal costs where the child is Looked After and the Local Authority support the application.

Tameside MBC uses its weekly in house fostering allowance as its baseline for calculating support and determining the amount payable. If the financial assessment determines an allowance might be payable, it will only be paid if it is assessed as necessary to meet the needs of the child as set out in a. and b. above.

### **Specific Financial Information for Local Authority Foster Carers**

The Local Authority will consider replicating the remuneration paid to Local Authority foster carers [1]

1. This will enable the former foster carer to become a Special Guardian for a child that they currently foster; and
2. An element of remuneration [2] was included in the payments made by the Local Authority to the foster carer/s in relation to his/her fostering of the child.

This must be agreed before the special guardianship order is made in order to facilitate arrangements for the foster carer to become a Special Guardian for that child.

In accordance with the Special Guardianship Regulations, the Local Authority will continue to pay former foster carers and connected carers until the end of the child's formal education, (after their 18<sup>th</sup> birthday) if the course started prior to their 18<sup>th</sup> birthday. This reflects the change in expectations and requirements made by the local authority of foster carers once the child is no longer looked after and is subject to annual review.

### **Financial Support and Means Testing**

The Special Guardian's means will always be taken into consideration when assessing whether or not ongoing financial support should be paid. A standardised means test is used to ensure fairness and consistency.

Means **WILL** be disregarded when:

- 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, as the case may be, associated with; the application fees and legal costs of securing a Special Guardianship Order in respect of a looked after child (or a variation to an existing order, e.g. contact), provided that the Local Authority supports the making of the order.
- The Special Guardian made their application under the 'no detriment' policy implemented in April 2019, having cared for the child when they were a foster carer for Tameside MBC or an Independent Fostering Agency.

Means **MAY** be disregarded when considering:

- Any special care requiring greater expenditure due to illness, disability, emotional or behavioural difficulties or the consequences of the past abuse or neglect of a child previously looked after;
- Initial placement costs;
- Recurring travel costs in contact arrangements for contact with a related person;
- When including an element of remuneration for a transitional period and this includes the financial payment received by a foster carer who wishes to become a Special Guardian.

In order to determine whether or not an allowance might be payable the applicants should be asked to complete the Financial Assessment form to allow for a means test calculation to take place.

Once the means assessment has been completed the outcome will be confirmed in writing by the Head of Service. The Head of Service will set out in writing the arrangements for review of the allowance. This will confirm that a review of the allowance will take place at least annually which may stipulate that a review of a child's needs and any other conditions attached to the allowance are also subject to a review. If there is any relevant change in the applicant's circumstances, breach of any conditions, or at another stage they consider appropriate due to the individual circumstances of the case.

- Upon receipt of the letter from the Head of Service, the Special Guardian will have 28 days to ask for any new information to be taken into consideration. The outcome of

the request for financial support will be made in writing and include the amount of financial support and information in relation to the following:

- Whether financial support is to be paid in regular instalments and if so, the frequency of payment;
- The amount of financial support;
- The period for which the financial support is to be paid;
- When payment will commence;
- Conditions for continuing payment and date by which conditions are to be met, i.e. returning Review Forms;
- Arrangements and procedure for review and termination.

Where Special Guardians are in receipt of financial support, they will be contacted by Tameside MBC annually with reference to a Financial Assessment Review Form to be completed, together with a request for information about any change in circumstances for the Special Guardian and/or significant changes in the child's needs. The completed financial assessment and the review of the child's needs (where applicable) will be forwarded to the Head of Service who will make a recommendation as to whether an allowance should continue to be payable and whether there needs to be a new assessment of the child's needs. Where a change is considered, the Special Guardian will be notified in writing of the change, together with the reasons for the change.

Where Special Guardians do not return the Assessment Review Forms within the required time scale, a reminder letter will be sent, giving 28 days' notice of the suspension of payments if the information requested is not received. The Local Authority will consider all resources available to the Special Guardian on annual financial reassessment (other than where former foster carers have a time limited agreement for two years transitional payment of the remuneration element of the finance previously received as a foster carer).

Financial support will be discontinued when any of the following apply:

- a. The child or young person ceases to live with the Special Guardian;
- b. The young person attains the age of 18, unless they continue in full-time education or training, when it may continue until the end of the course or training (usually the academic year following the 18th birthday). For the avoidance of doubt this is secondary education or equivalent and will not include university or further training entered into after the child has turned 18;

- c. The child ceases to attend full time education or training or commences employment;
- d. The child is able to obtain his/her own benefits in his/her own right.

As a result of a review and whilst awaiting representations from the person whom the support plan affects, the Local Authority may suspend financial support.

If carers make contact and the annual review is completed within two months of the suspension date then payments are reinstated from the date that they have been suspended.

If longer than two months have passed before carers make contact and the allowance is reviewed then payments will be reinstated from one of three dates:

- The date from which payments have been suspended;
- The date that the carer has made contact about payments not being made;
- The date that the carer signs the completed review form.

[1] A local authority foster parent, referred to as a local authority 'foster carer', is a person who is approved as a local authority foster parent (it includes foster carers who have been approved by an independent fostering agency and foster carers who have been approved by the local authority).

[2] Reference to element of remuneration refers to the fee element of the payment to foster carers.

### **13. Payment of Legal Fees**

Where there are existing care proceedings and the SGO application is being made within those proceedings and is supported by the Local Authority, it is generally not necessary for the Special Guardians to be made a party to the proceedings and represented within the proceedings.

Where Tameside MBC supports the application for a SGO and the application is being made as a stand-alone application outside of existing care proceedings, where it is considered appropriate, initial agreement may be given to pay a contribution of up to £1500 exclusive of VAT towards the special guardian or prospective guardian's legal costs, which may include costs for legal advice before an application for a Special Guardianship Order (SGO). This sum is a contribution and if these costs are exceeded Tameside MBC will not contribute to any additional legal costs or advice incurred.

Such payments or contributions towards legal costs or advice will only be considered if the potential Special Guardian is unable to obtain public funding from the Legal Aid Agency to make their application and such application is supported by the Local Authority.

In those cases where the Court has determined it is necessary for the Special Guardian(s) to be joined as a party to the proceedings, in the event that they are unable to obtain support from the Legal Aid Agency, the Local Authority supports the application, any agreement to pay the Special Guardian's legal costs to be represented in the proceedings will be made by the Head of Service and will be determined on a case by case basis.

In the event of the Local Authority not supporting an application for SGO, agreement will not be given to pay or contribute towards the legal costs, including costs for legal advice of the proposed Special Guardian(s) whether party status in the proceedings is granted or not.

Special Guardians are encouraged to seek information from relevant organisations such as the **Citizens Advice Bureau** and the **Family Rights Group**.

#### **14. Urgent Cases**

Where a person has an urgent need of a service, the assessment process should not delay provision and arrangements can be made for support to be provided as a matter of urgency in appropriate cases. The approval of the Head of Service will still be required. The local authority will need to review the provision as soon as possible after the support has been provided in accordance with the procedures set out above.

#### **15. Entitlement to Leaving Care Services**

Regulation 22 of the Special Guardianship Guidance – Statutory Guidance for Local Authorities on the Special Guardianship Regulation 2005 (as Amended by the Special Guardianship (Amendment) Regulations 2016) states that 'Time spent under a Special Guardianship Order is relevant when considering the child's entitlement to leaving care services'. Section 24(2) of the Children Act defines a person qualifying for advice and assistance. This includes a young person aged 16 to 18 who immediately before the making of the special guardianship order was 'looked after' by the local authority.

Advice and assistance will be given by the Service to a Special Guardian when their child reaches 16. Where appropriate this may include contact with the Leaving Care Team.

For the purposes of this assistance the Local Authority will be the Local Authority which last looked after the child.

## 16. Discharge of Special Guardianship Order

A Special Guardianship Order can be varied or discharged on the application of:

- The Special Guardian;
  - A Local Authority designated in a care order in respect of a child;
  - Any person who is named in a child arrangements order as a person with whom the child is to live before the Special Guardianship Order was made;
- or
- With the leave of the court:
    - The child's parents or guardians;
    - Any 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).

Where the applicant is not the child and the leave of the court is required, the court may only grant leave if there has been a significant change in circumstances since the Special Guardianship Order was made.

The court may during any family proceedings in which a question arises about the welfare of a child who is subject to a Special Guardianship Order, vary or discharge the Order in the absence of an application.

## 17. Special Guardianship Records

### The child's file

All information regarding an application for a SGO will be kept on the child's electronic case record.

### File closure

The child's case file **must** be closed and archived at the point where the SGO is made unless there is an agreement to provide ongoing support set out in the support plan.

## **18. Special Guardian Duty on the Death of the Child**

If the child with respect to whom a Special Guardianship Order is in force dies, the Special Guardian must take reasonable steps to give notice of that fact to:

- Each parent of the child with Parental Responsibility; and
- Each guardian of the child.

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## **Appendices**

### **Appendix 1: Regulation 21 Report Schedule**



Regulation 21  
schedule.docx

### **Appendix 2: SGO Report Template**



Special Guardianship  
Report.docx

### **Appendix 3: Support Plan Template**



SGO support  
plan.doc

### **Appendix 4: SGO flow chart and process**



SGO flow chart.docx

### **Appendix 5 : Special Guardianship leaflet**



SGO LEAFLET.pdf