

# Children Looked After & Special Guardianship Order Policy



This policy sets out the legal framework for Special Guardianship and how this is applied by Swindon Council's Children's Services (CYPS).

This policy document should be read in conjunction with national and local policies and procedures such as:

- The Children Act 1989 Guidance and Regulations Vol 2 Care Planning Placement and Case Review July 2021
- Special Guardianship Guidance and Regulations, DfES 2005
- The Special Guardianship (Amendments) Regulations 2016
- Family Justice Council - Recommendations to achieve best practice in the child protection and family justice systems: Special guardianship orders. June 2020
- Practice Law Working Group Best Practice Guidance: Special Guardianship Orders 2021

This policy is effective from May 2023 for all new Special Guardianship arrangements. The previous policies in 2016 and 2019 remain in force for those Special Guardians who come under these policies.

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## **1. What is Special Guardianship – Introduction and legal framework**

Special Guardianship provides an alternative option for children who can't live with their birth parents and is an alternative to fostering, Child Arrangement Orders or adoption. The Adoption and Children Act 2002 provides the legal framework for Special Guardianship under the Children Act 1989. Further legal provisions in relation to special guardianship are set out in the Special Guardianship Regulations 2005, (as amended by the Special Guardianship (Amendment) Regulations 2016).

A Special Guardian is usually someone with a close relationship to the child, such as a family member, the child's current foster carer or family friend. This person will need to obtain some legal advice and will need to apply to the court which will consider their suitability to care for and meet the child's needs, based on a report from the local authority. The Special Guardian will file their application and the Local Authority will then undertake the assessment as directed by the court. If the assessment is positive the Local Authority can then apply to discharge the child's Care Order.

The court can also make a Special Guardianship Order if it is already hearing a case about the child in any other family proceedings (for instance care or adoption proceedings) if the Special Guardianship application has been made, and if it considers the order appropriate.

A Special Guardianship Order gives the carer parental responsibility for the child. The birth parents remain the child's legal parents and retain parental responsibility however this is limited, if the Special Guardian deems it appropriate to use their overarching Parental Responsibility.

The Special Guardian has the day to day responsibility for decisions about caring for the child and his/her upbringing and may exercise the parental responsibility to the 'exclusion of anyone else with parental responsibility'.

A Special Guardianship Order made in relation to a Looked after Child will still require the Local Authority to apply to discharge the care order and Swindon Council would no longer hold Parental Responsibility once the discharge of the care order is

agreed. The making of a care order does not automatically revoke a Special Guardianship Order although the Special Guardian's exercise of parental responsibility may be restricted as Swindon Council has shared parental responsibility for decision-making with the Special Guardians, unless the criteria in section 33b of the Children Act 1989 is met (see footnote p24)

Special Guardians still need the consent of everyone with parental responsibility or the permission of court in certain situations. Special Guardians cannot:

- Change the child's surname,
- Remove the child from the UK for more than three months,
- Consent to placement of adoption or the child's adoption without parental consent

## **2. Application for Special Guardianship Orders**

There are several ways that Special Guardianship Orders (SGO) are granted by the Court.

When a child or young person becomes cared for by the local authority, an initial viability assessment will consider the applicant's suitability to care and their ability to meet the child or young person's needs. The Local Authority will always consider any family or connected person/s as prospective carers for a child whilst exploring and assessing whether a child can return home or where longer term care arrangements such as a fostering family, children's homes or a plan of adoption is in the best interests of the child. Where discussions with family or connected persons are taking place, information around special guardianship should be shared and prospective Special Guardians are encouraged to seek legal advice. In these instances the Local Authority will fund the equivalent of two hours legal advice paid at the legal aid level. Initial viability assessments will be completed with prospective family and connected persons and if positive, a full connected persons' assessment will be completed, where special guardianship can also be assessed.

## **Private applications**

A Special Guardianship Order is granted by making an application to the court as an individual or jointly with another person. Applicants do not need to be married but must be over the age of 18. Foster Carers where the child/young person has lived for one year immediately prior to the application being made can apply for a Special Guardianship Order.

Three months before applying to become a Special Guardian, the applicants need to inform the Local Authority in writing that an application will be made. The only exception to this is where the applicants have already made an application for an adoption order, and they then decide, with the court's permission, to pursue special guardianship instead. In these circumstances applicants do not need to give three months' notice to the Local Authority. The Local Authority upon receiving notice of the application, will pass this to the allocated social worker where the child is known. In situations where the child is unknown to the Local Authority, a social worker will be allocated. The Local Authority will need to complete a suitability assessment and submit a special guardianship report to the court.

The following people are entitled to apply for a Special Guardianship Order without needing to first seek the leave of the court:

- Any guardian of the child.
- Any person who is named in a child arrangement order as a person with whom the child is to live.
- Any person who has the consent of each person named in a child arrangement order as a person with whom the child is to live.
- Anyone with whom the child has lived for a period of at least 3 years (which need not be continuous but must not have begun more than 5 years before, or ended more than 3 months before, the making of the application).
- A relative with whom the child has lived for a period of at least 1 year immediately preceding the application.
- Where the child is in the care of a local authority, any person who has the consent of the local authority.
- Any person who has the consent of all those with parental responsibility for the child.

- Any other person aged 18 or over (other than a parent) may apply for a Special Guardianship Order if they have the leave of the court to make the application.

Additionally, the Court may also make a Special Guardianship Order in any family proceedings concerning the welfare of the child. An application has to be made to the Court and includes adoption proceedings. The court does not need to give three months' notice and the local authority is obliged to report to the Court's request for an investigation. The court, however, cannot make an SGO without an SGO report. The parents of a child may not apply to become their own child's Special Guardians.

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

Local Authorities are not expected to meet the legal costs of a Special Guardianship Order where they oppose an application in respect of a child they previously looked after or a where a child is not looked after. Swindon Council will advise prospective Special Guardians in these circumstances or where there is a negative assessment, that they may be able to obtain help with legal costs from the Legal Aid Agency.

### **3. Planning Meeting**

Once notice has been received that an application for Special Guardianship is to be made the notice should be passed to the allocated social worker and the Fostering Recruitment and Assessment Team. If the child is not currently open to a social worker, consideration will be given as to whether the child needs to be opened for an assessment of need. If the threshold for assessment has not been met, a social worker within the Fostering Recruitment and Assessment team will complete the assessment independently and refer the child to MASH should any safeguarding concerns arise during the assessment process.

The allocated social worker should complete a Child and Family assessment if this has not been recently updated. Parallel to this the child's social worker must arrange a planning meeting within 5 working days to discuss the planning for the assessment process for a Special Guardianship Order. The planning meeting should clarify the steps to be taken, who will carry out the necessary assessments and who will contribute to the report for the Court. Court timescales will need to be clarified. The prospective Special Guardians should be included in this meeting and the Independent Reviewing Officer (IRO), where allocated, must also be notified.

Where children who are in the care of Swindon Council's Children's Social Care have a proposed plan of special guardianship or permanence outside their parents' home, long term permanence plans are to be agreed and endorsed through a looked after children's review and through a Permanence Planning Meeting. Minutes of these meetings will be distributed to participants and attached to the child's case records.

#### **4. The Special Guardianship Assessment for Court**

In situations where a Special Guardianship Application is before the court, a Special Guardianship Assessment will be completed as set out in the criteria set out in the schedule to the Special Guardianship Regulations 2005.

[The Special Guardianship Regulations 2005 \(legislation.gov.uk\)](http://legislation.gov.uk)

Swindon Council will ensure that this is completed by a social worker from the Fostering Team and (where applicable with input from the child's allocated social worker).

The Special Guardianship Regulations 2005, provides an outline of some of the areas covered by the assessment of prospective Special Guardians. The assessment should cover all the necessary information about the child, birth family, prospective Special Guardians, the wishes and feelings of all parties involved, the support needs identified and a recommendation about the making of an Order, including any family time arrangements.



Special Guardian assessments are thorough reports which will involve visits by a social worker to the applicant's household and will include discussions with prospective Special Guardian(s) and their family and friend's network (if appropriate) and those that live or spend significant time within the applicant's household. This could include birth parents of the child (ren), extended family or friends as appropriate.

The local authority will carry out thorough safeguarding checks which include Disclosure and Barring Check (DBS), Probation, GP Medical reports, Local Authority records, personal references, ex- partner references and also school references if the applicant has school-aged children. The local authority may undertake additional safeguarding checks if deemed necessary. The assessment will also take into consider the outcomes of any previous viability or SGO assessment.

Some of the areas to be covered in the Special Guardian assessment report are as below:

- Details of the local authority completing the report
- Circumstances and experiences for child or young person and their family. This should be based upon the Child's Assessment Framework
- The wishes and feelings of the child or young person and parents and others.
- Circumstances and experiences of the applicants and their relationship with the child.
- The proposed Special Guardian's ability to appropriately meet the child's needs now and in the long term. This includes 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 that Swindon Council considers relevant.
- Summary of checks and assessment as to the impact upon the child or prospective Special Guardian's ability to meet the child's needs.
- Summary of the implications of making an SGO for the relevant parties.
- The merits of a whether a Special Guardianship Order is in the best interests of the child or whether alternative proposals should be considered.

- Recommendation as to what family time arrangements might be for the child or young person.

Please note: This list does not include everything which could be covered in the assessment.

The completed SGO assessment together with support plan will be considered and agreed by the ADM (Agency Decision Maker – this is usually a designated senior manager) who provides the final scrutiny, and their decision may sometimes differ from the recommendations made by the assessor.

The report for Court should be completed using the Special Guardian/ Connected Persons Assessment Form. The prospective Special Guardian should receive a copy of the assessment and any proposed support plan, details of which are outlined below under section 6 The Special Guardianship Support Plan.

## **5. Entitlement to assessment for Special Guardianship Support**

Swindon Council recognises that it has an obligation through the amended (Children Act 1989 (Section 14F) to establish and maintain a range of support services in their area designed to meet the needs of people affected by Special Guardianship.

A request for the assessment of support can be made to the local authority by:

- the Special Guardian or prospective Special Guardian;
- the parent(s)
- the child
- any person with a significant ongoing relationship with the child.

It is vital to ensure that children and families involved in Special Guardianship arrangements are encouraged to access independent legal advice and are assisted in accessing universal and targeted services available in the community. They will also be encouraged to independently check their entitlement to welfare benefits and tax credits as appropriate. It will not always be necessary to undertake an assessment before providing information, advice or counselling services.

Where Swindon Council is considering providing a package of support services, as outlined above a full child and family assessment should be undertaken if not already completed by the child's social worker. This will be considered with the prospective SGO assessment which will subsequently inform the support plan to ensure that they can meet the needs of the child and any support required. Where a request relates to a particular service or where it is clear that a particular service is required, then the assessment process can be limited to looking at the need for that provision.

The type of support that can be considered for Special Guardians by Swindon Council could include :

- Support with cost of a one-off legal consultation (up to two hours)
- Access to therapeutic support via Adoption Support Fund.
- Ongoing access to specialist training from Swindon Council.
- Access to advice and support from the Special Guardianship Support Team in Swindon.
- Ongoing access to Special Guardian support groups and social events.
- Financial Support.
- Advice and support around managing family time.
- Advice and support around education and housing issues.
- A SGO support plan based on assessment. This will be reviewed at least annually or where there is a change of carers or child's circumstances.

### **When there is a negative decision on undertaking an assessment**

If Swindon Council decides not to complete an assessment in situations where they have discretion, a decision must be given in writing to the person making the request outlining the reasons for the decision. The person requesting the assessment must be allowed at least 28 days to make representations in relation to the decision.

## **6. The Special Guardianship Support Plan**

If following completion of the assessment it is decided that a person has needs for Special Guardianship support services, the person needs to be notified of the outcome of the assessment and the services that Swindon Council propose to provide. The notice will be provided following the authorisation of the assessment and support plan by the ADM.

When providing the person with the outcome of the written assessment, Swindon Council will also refer the person to sources of independent advice and advocacy to consider the proposed plan.

The support plan will outline:

- A named person / agency to monitor the provision of services in accordance with the plan.
- The services to be provided. Support services should be considered holistically consulting with any of the universal services including education, health or any relevant counselling or advice services and be prescribed to meet the needs of the child(ren) and family affected by the Order.
- The objectives and best hopes in relation to the services
- Financial Support – paid subject to assessed need and means tested (child benefit and child tax credits will be considered and deducted). This will not be means tested for a period of 2 years if the child was previously placed with family members that are already approved as Connected Persons carers when the Special Guardianship Order is made. Where the Special Guardians were previously the child's foster carers – Swindon Council may agree to continue to pay the fee element for a transitional period of up to two years. Subsequently after two years, there will be a means test for any further financial support unless there is a previous agreement.
- Family time arrangements between child, parents, Special Guardians and any relatives or relevant persons that Swindon Council considers beneficial to the welfare of the child. The plan should stipulate the family time arrangement including appropriate venue and who should attend.

- Consideration should be given to a possible referral to apply for the Adoption Support Fund or alternative funding streams for therapeutic services if this is outlined in an assessment as being required as part of the assessment of the child's needs and Special Guardianship Support Plan. This will be agreed by the Special Guardianship Support Team Manager and Head of Service for Fostering and Placements.
- Timescales for provision
- Procedures for review

Where a proposed Special Guardian resides in another local authority area, liaison should take place with the relevant manager for Special Guardianship Support in that area to ascertain:

- Details of any Special Guardianship support services which are offered in the area e.g. support groups
- Local knowledge of specialist provision e.g. mental health services for children and young people

The consent of the Special Guardian should be obtained to refer them to the authority in which they live and any agreement by both the local authorities to offer services to the family will be contained within the Special Guardianship Support Plan and will include funding arrangements and timescales. Swindon Council will normally hold responsibility for support for a period of three years following the making of the order. After this time, the Special Guardian can approach the Local Authority where they are living for practical support if required.

## **7. Review of Support Plans**

Special Guardianship support services (other than financial support payable periodically) must be reviewed where:

- there is any change of circumstances affecting the support;
- The Special Guardianship requests a review of support

- at such stage of the implementation of the plan as is considered not appropriate;
- the plan is failing to meet the needs of the child(ren) or Special Guardians
- In any event, as a minimum annually

An initial review should consider the information contained within the assessment and the impact of care on the child. The review of the support plan will include considering the child's needs, wishes and experiences and the Special Guardian's ability to care, support and nurture the child. The Special Guardianship Support Team will get in touch with Special Guardians just prior to their annual review to consider any changes in circumstances. If at any time during the assessment the allocated social worker is of the view that there are safeguarding concerns in relation to a child, a referral will be made to the Multi Agency Safeguarding Hub (MASH).

Subsequent reviews may be a paper exercise where there is no change or a minor change in circumstances, or where the support service provided is purely financial by means of a regular allowance. However, if there is a substantial change of circumstances e.g. significant deterioration in the child's presentation or the abilities of the Special Guardian, it may be appropriate for a full re-assessment of need for support services and consideration for a Child and Family's assessment referral made to the Multi Agency Safeguarding Hub. In these circumstances, the assessment will be led by the Multi Agency Safeguarding Hub.

Any change to the support plan following a review or re-assessment will need to be approved by the Special Guardianship Support Team. Any changes in relation to ongoing financial support will need to be approved by the Head of Service.

The format and content of the review will vary depending on the circumstances of the child and family. Notification of changes of circumstances and any review of the provision of support services need not always necessitate direct contact between Swindon Council and the Special Guardian. Where the change of circumstances is relatively minor the review might be limited to an exchange of correspondence. In

particular the annual review of financial support might be achieved by exchange of correspondence between Swindon Council and the Special Guardian.

Where a person has an urgent need for a support service, the assessment process should not delay the provision; arrangements can be made for support to be provided as a matter of urgency in appropriate circumstances. Provision of services on an urgent basis will need to be approved by the Special Guardianship Support Team Manager responsible for implementing the support plan. The provision will need to be reviewed as soon as possible after the support has been provided, in accordance with the procedures set out above.

If Swindon Council proposes to vary or terminate the provision of Special Guardianship support services to any person, before making any decision as a result of the review, it must give the person an opportunity to make representations and; for that purpose, it must give notice of the proposed decision and the time allowed for making representations. The proposed notice period will normally be 28 days, however individual circumstances will be considered. This notice must contain the same information as the notification of the outcome of a first assessment including a draft of the revised plan. Any decision to vary or terminate the provision of support after the review must be given in writing.

## **8. Financial Support for Special Guardians**

Regulation 6 of the Special Guardianship Regulations 2005, states that financial support is payable to Special Guardians:

- (a) to facilitate arrangements for a person to become the Special Guardian of a child where the local authority consider such arrangements to be beneficial to the child's welfare; or
- (b) to support the continuation of such arrangements after a Special Guardianship order is made.

Further, Regulation 6(2) states that financial support is payable in the following circumstances:

(a) where the local authority consider that it is necessary to ensure that the Special Guardian or prospective 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;

(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, as the case may be, 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 Act;

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

(d) where the local authority consider that it is appropriate to contribute to the expenditure necessary for the purposes 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.

Swindon Council will consider payments under Regulation 6 (2)(b) where a child has serious and long term needs. Additionally the local authority will give consideration to supporting Special Guardians financially to facilitate family time arrangements where this is in the best interests of the child.

Swindon Council must take account of any other grant, benefit, allowance or resource available to the person in respect of their needs as a result of becoming a Special Guardian of a child. Financial support cannot duplicate any other payment available to the Special Guardian. Special Guardians must be helped to access any benefits to which they are entitled; this will usually include child benefit and tax credits.



**It is important to note that Swindon Council are not required to make regular payments to a Special Guardian unless this is an alternative to care.** This is under review by government and may be altered once the Kinship Strategy is rolled out. This policy will be revised if that is the case

Special Guardianship arrangements should not fail just because of financial problems. Special Guardians can receive a financial allowance from the Local Authority following an assessment of means. This allowance will be outlined in the Special Guardianship Support Plan and will be means tested each year. If the Special Guardian is an approved foster carer for Swindon Council, they will be exempt from means testing for a two year period minus the rate of child benefit and child tax credits.

Special Guardian allowances are subject to means testing. A financial assessment will take place as part of the SGO assessment where this is identified within the Special Guardianship Support Plan.

Where an order is made and a Special Guardianship allowance is being paid this will be reviewed annually where Special Guardians will receive a request for information to allow financial calculation to be reviewed. Swindon Council will use the age related fostering allowance as a baseline and the Department of Education's Standardised Means Test model.

Additionally, means may be disregarded in relation to:

- The initial costs of accommodating a child who has been Looked After;
- Recurring travel costs in contact arrangements;
- 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;
- Where considering an element of remuneration in financial support payments to ex-foster carers.

Payments to Special Guardians are exempt from tax under the 'qualifying guardians' exemption. Payments are not treated as income from self-employment and do not need to be declared on a self-assessment tax return. These payments should also be ignored when calculating tax credits, housing benefit or any other means-tested benefit.

Where initial discussions are taking place for a child to potentially live with a connected person or to be considered as part of a Regulation 24 of the Care Planning, Placement and Care Review (England) Regulations 2010 arrangement with a view to obtaining a Special Guardianship order, no financial arrangements should be offered or agreed by the children's social team without reference to Swindon Borough Councils finance policy and prior discussions with the Special Guardianship Support Manager or Service Manager for Looked after Children and Corporate Parenting. In these situations, an information pack should be provided to any prospective Special Guardian during discussions.

Consideration can be given to one-off assessed financial support through Section 17 of the Children Act to support private arrangements between a parent and Special Guardian where the child is deemed to be a Child in Need as this would promote the child's best interests in line with the support plan. Formal ongoing financial support may be given to Special Guardians who care for a child as a direct alternative to care. Where Section 17 money has been paid to cover the transition period between fostering and the Special Guardianship Order being granted this money will be recovered from the first Special Guardianship payment.

### **Review of Financial Support Paid Periodically**

All Special Guardians will be means tested on a **yearly** basis following the Order:

- Where there are exceptional circumstances which need to be considered in regard to the rate of payment provided or, a period of protected payments (a period of non-means testing) this needs to be discussed with the Service Manager for Looked after Children and Corporate Parenting. Any changes

due to exceptional circumstances needs to be endorsed by Service Manager for Looked after Children and Corporate Parenting.

- Should circumstances change for the carer/s during the year it is the carers responsibility to contact the Special Guardianship Support Team to notify of any changes. This will trigger a new financial assessment to include the changes.
- When Special Guardian(s) receive their new financial request package from Swindon Council it is essential that this is returned as soon as possible with all required documents within the required timescales.
- Failure to return the documents within six weeks will result in payments being suspended. These will only then be reinstated from the date of the new assessment. Individual circumstances may be taken into account subject to managers discretion.

As part of the conditions of the Special Guardianship arrangement, the Special Guardian agrees to advise Swindon Council of where there is:

- A change of address,
- The child dies,
- Any of the conditions outlined below outlined in Regulation 9,
- There is a change in financial circumstances or the financial needs or resources of the child which may affect the amount of financial support payable to him.

The Special Guardian agrees to the local authority completing an annual review (including the Special Guardian Allowance annual review) and agrees to return the form and appropriate documentation to Swindon Council within the requested timescales.

## **Overpayments**

Following assessment all payments will be amended from the assessment date. This may cause an overpayment. Where the Special Guardian has been assessed to continue to receive financial support at a lower rate the money will be deducted automatically from future payments.

Should the Special Guardian not be entitled to financial support following assessment an invoice will be raised for any overpayment.

Should Special Guardianship carer(s)' circumstances change under Regulation 9 of the Special Guardianship Regulations 2005 such as:

- the child or young person has left the Special Guardian('s) care,
- has ceased full time education or training and commences employment,
- qualifies for universal credit, income support, jobseekers allowance or employment support allowance in his/her own right or
- becomes 18 unless they continue in full-time education or training, when it may continue until the end of the course or training they are then undertaking.

Where Swindon Council is not notified of changes, the changes will be implemented immediately from the date of change and the Special Guardianship carer(s) will receive an invoice for any overpayment.

## **9. Other Arrangements**

Circumstances in which Swindon Council may be asked to take on pre-existing support plans:

- Where the child was Looked After by another authority but resident in Swindon, three years after the order was made the responsibility for any support other than finance passes to the local authority where the child lives i.e. Swindon.

- Where a child who was not Looked After but receiving support from another authority moves into Swindon, the responsibility for any support other than finance will immediately lie with Swindon.
- If the child was looked after by Swindon Council immediately before the SGO was made, Swindon Council is responsible for the assessment and provision of support services even if the child moves to a new local authority after the order is made. This responsibility remains for a period of three years from the date of the making of the order. After that time, responsibility for support passes to the local authority in which the Special Guardian resides but any ongoing financial support agreed by Swindon Council will continue for as long as the family in question qualify for payments.
- With regards to carers' intention to apply for an SGO, if the child is looked after by another local authority and resident in Swindon, and a prospective Special Guardian gives notice of their intention to make an application, the responsibility rests with the local authority responsible for the child.
- Equally, any of Swindon Council's cared for children placed out of borough remains Swindon Council's responsibility in the event of a Special Guardianship application being made by their carer(s) or a connected person that does not reside in Swindon.

## **10. Leaving Care Support**

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) clearly states that '*time spent under a Special Guardianship Order is relevant when considering a young person's entitlement to leaving care services*'. This means where a child was Looked After by Swindon Council immediately before the making of a Special Guardianship Order, they will have a right between the ages of 16 and 25) to obtain to advice and

assistance as a 'qualifying' young person from Swindon Council's Leaving Care Service.

## **11. Case Responsibility & Management**

When a prospective Special Guardian(s) gives notice of their intention to make an application or when the Court requests that the local authority complete a Special Guardianship assessment report within ongoing proceedings, the report will be completed by a suitably qualified social worker within the Fostering Recruitment and Assessment Team. If there is an allocated social worker (or supervising social worker for foster carers) joint work will be needed to complete the assessment.:

Special Guardianship Orders are made on the basis that the prospective Special Guardians will meet the needs of the child and provide stability throughout the child's minority. After the making of an order, the involvement with children and Special Guardians will normally cease unless ongoing support is outlined within the support plan. As a plan of permanence for children, this allows the family to settle and have a warm close relationship. Families can contact the Special Guardianship Support Team after an order is made if they need advice and support. A family can transfer to the Special Guardianship Support Team at the making of the order if there is a need for ongoing support, as outlined within the support plan and the family's needs cannot be met through universal and targeted services.

If a Supervision Order in respect of the child is attached with the Special Guardianship Order or is obtained afterwards, the children in care team will remain responsible for the child and family for the duration of the Supervision Order but will work closely with the Special Guardianship Support Team to access specialist services for the child and Special Guardians. At the end of the period of Supervision Order, the Permanence Support team can take over full responsibility for the family if there is a need for additional support.

## **12. Representations**

Swindon Council will allow prospective Special Guardians or Special Guardians a period of 28 days for representations in the following situations:

- a. Following the completion of the assessment and support plan, the Special Guardian or prospective Special Guardian will be notified of the outcome of the assessment and the proposed support plan (which may include financial support) for them to consider.
- b. Following the annual review of a current support plan (including the review of the financial support).

The 28 days starts from the date of sharing the assessment / support plan / review decision.

Representations will be considered by the relevant Team Manager in consultation with the Head of Fostering and Placements. The Head of Corporate Parenting will also be consulted if representations are made in relation to matters regarding financial support. The Team Manager will respond within 10 working days of receiving the representations and will set out any reasons for their decision in writing. Special Guardians or prospective Special Guardians who remain dissatisfied will be entitled to use the Swindon Council's complaints procedure.

If however, the disagreement is not resolved and the prospective / Special Guardian involves an outside agency in pursuing the complaint or takes legal advice, Swindon Council's Children's Legal Services must be advised and all relevant reports and decisions shared with them.

## **13. Special Guardianship Orders where connected persons live overseas**

Identifying potential long-term carers for the child within the family may include those who are either resident in, or nationals in, overseas countries. Special guardianship can be considered in placing a child outside of the jurisdiction. Consideration must be given to how assessments are carried out in a legally compliant and culturally relevant manner. Legal advice must be sought and thought should be given to:

- The status of Special Guardianship in that country and other legal matters;

- The relevant matters associated with the care of children in that country: permanent, stable and secure family life; safeguarding; education and health; and specifically how all of these relate to the personal living circumstances of the host family and their need for support services, including financial and therapeutic support and contact between family members including those resident in the UK;
- Contacting local agencies in that country for guidance on the support that maybe offered.

In advance of the child being placed, a plan will need to be agreed about how the placement will be supported and what the contingency arrangements are for the child.

Note:

- Contracting states to the 1996 Hague Convention will be better placed to offer co-operation and support than some other countries (see Swindon Safeguarding Board website)
- Social workers should carefully explore the local authority's ability to provide financial support particularly after an initial three years, when 'out-of-area placements' are abroad.

#### **14. 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 arrangement 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.

### **15. 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.
- The Local Authority.

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Footnote 1

#### **Children's Act 1989**

Section 33 (3) While a care order is in force with respect to a child, the local authority designated by the order shall—

(a) have parental responsibility for the child; and

(b) have the power (subject to the following provisions of this section) to determine the extent to which;

(i) a parent, guardian or special guardian of the child; or

(ii) a person who by virtue of section 4A has parental responsibility for the child,]

may meet his parental responsibility for him.

(4) The authority may not exercise the power in subsection (3)(b) unless they are satisfied that it is necessary to do so in order to safeguard or promote the child's welfare.

(5) Nothing in subsection (3)(b) shall prevent a person mentioned in that provision who has care of the child] from doing what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting his welfare.