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# **A Foster Carers Guide to Special Guardianship**

## **Introduction**

At Rochdale Metropolitan Borough Council (MBC) we want the best for our Cared For children and young people.

We know that many of the children and young people in our care have suffered from adverse early circumstances. Whilst we cannot change this, we can help them towards a positive future as successful and contributing adults. A key to achieving this is to ensure that they have the permanency in their lives which any child or young person should be able to expect.

Research shows us that when children or young people know that their carers are committed to bringing them up to adulthood they are more able to put down roots and to concentrate on other aspects of their lives. This generally results in better educational, health and social outcomes, so helping them on their journey to becoming the successful and contributing adults they have every potential to be.

### **What is permanency?**

The aim of permanency is to give a child or young person a lasting experience of a family that gives them the opportunity to attach to adults and to experience normal loving family life.

The key elements of permanence are security, wellbeing and family membership through a shared history and identity, which endure over time into adulthood.

In care planning for our Cared For children and young people, we know that there are 3 key aspects to permanence:

- Emotional permanence (attachment)
- Physical permanence (stability)
- Legal permanence (the carer has parental responsibility)

Whilst long term foster care can enable the intrinsic qualities of belonging and emotional permanence as well as physical stability, it cannot facilitate the third aspect because foster carers do not have parental responsibility.

Special Guardianship offers a legal framework that can encapsulate and potentially secure all 3 key aspects.

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## **What is Special Guardianship?**

The Adoption and Children Act 2002 introduced Special Guardianship and Special Guardianship Orders.

A Special Guardianship Order is an Order made by the Court appointing a non-parent person to be a child or young person's Special Guardian.

If there is a conflict between the parent(s) and the Special Guardian(s) with regard to how to bring up the child or young person, the Special Guardian(s) opinion takes precedence.

A Special Guardianship Order enables a Special Guardian to have day to day decision making and to exercise parental responsibility to the exclusion of all others with parental responsibility, except another Special Guardian.

At the time of making a Special Guardianship Order, a court may also give leave for the child or young person to be known by another surname and/or give permission for the child or young person to be taken out of the United Kingdom for periods longer than 3 months. Otherwise, the Special Guardian(s) must obtain the written consent of every person who has parental responsibility for the child or leave of the court beforehand.

A Special Guardian(s) retains Parental Responsibility for a child or young person until they reach the age of 18.

Someone who has a Special Guardianship Order is not subject to any Complaints Procedures and cannot be held accountable for their actions under the Human Rights Act as a Local Authority can be in respect of a Care Order.

## **Can a foster carer apply for a Special Guardianship Order?**

Yes. A foster carer with whom the child/young person has lived for one year immediately preceding the application can apply for a Special Guardianship Order.

Also, if within Care proceedings, a Special Guardianship Order to a foster carer may be made - but this is usual in relation to Friends and Family foster carers.

An application for a Special Guardianship Order may be made by an individual or jointly by two persons. They do not need to be married but must be 18 or over.

## **What is the application process of a Special Guardian involve?**

Reg 11 (C.A 1989 S.G regulations 2005) states that an assessment must be undertaken in respect of an application in relation to any child or young person who has been Cared For by the Local Authority immediately prior to the making of SGO.

Assessments of family and friends applicants maybe directed by the court and these assessments may happen in parallel with an assessment for them as family and friends foster carers.

A foster carer who is applying for a Special Guardianship Order because of their 'time – relationship' with the child or young person must give 3 months' notice to the Local Authority.

The exception to a foster carer giving three months' notice is if they are given leave by the court through existing family proceedings which may be the case in respect of family and friends foster carers.

The Local Authority is required to undertake a report for the court in regard to the suitability of all applicants, including foster carers. This is usually completed within 3 months but in some cases may take longer if it needs to.

The most important thing is that there is enough time within the process to enable all parties, but particularly foster carers, to have sufficient preparatory time to consider all the implications of what becoming a special guardian means for them. You will need to take into account what the impact will be, practically, emotionally and financially on yourselves, your family and the child or young person - currently and into the future.

The matters to be covered in the special guardian assessment report are as below:

Matters in regard to the child or young person;

- Matters in regard to the child or young person's family;
- The wishes and feelings of the child or young person and others;
- Matters in relation to the applicants;
- Details of the local authority completing the report including support services to be provided for the special guardian, the child or young person or the birth parents;
- Summary of medical information and assessment;
- Summary of the implications of making an SGO for the relevant parties;
- The relative merits of special guardianship and other orders;
- Recommendation as to whether an SGO should be sought or alternative proposal;
- Recommendation as to what the contact arrangements might be for the child or young person.

### **What support would I get as a Special Guardian?**

In addition to an assessment of your suitability to become a special guardian for a specific child or young person, the Local Authority is also required to undertake assessments as to what support services are needed.

The Local Authority is required to make arrangements for the provision of a range of support services for special guardians as part of their general service provision. These services may include counselling, advice, and mediation information and such as other services.

In undertaking an assessment of your needs for support services the regulation 12 (C.A 1989 SG Regulations 2005) states that the following should be considered as far as is relevant in any particular circumstances;

- The developmental needs of the child or young person;
- The parenting capacity of the prospective special guardian or special guardian;
- The family and environmental factors that shaped the life of the child or young person;
- What the life of the child or young person might be like with the special (proposed) special guardian;
- Any previous assessments undertaken in regard to the child or young person;
- The needs of the special guardian (proposed special guardian);
- The likely impact of an SGO where there are pre-existing relationships with the parent of the child or young person – for example when grandparents are the proposed as special guardians.

The Local Authority has responsibility for providing ongoing support for 3 years but after this time the responsibility would revert to that Local Authority where you live. This therefore needs to be borne in mind in the planning at the onset of any application you made, especially if you are intending to move out of the Local Authority area some time in the future.

### **What Financial Support Would I Receive as a Special Guardian?**

The guidance Regulation 6 (*C.A 1989 S.G regulations 2005*) states that “financial issues should not be the sole reason for an SGO arrangement failing to survive”. The principle underpinning the regulations and guidance is that financial support should be available to ensure that financial aspects are not an obstacle.

Regulation 13 outlines the expectation that special guardians should access the benefits that they are entitled to. It also stipulates that any financial support made to special guardians under these circumstances should not duplicate any other payment that they receive.

The areas that the Local Authority is required to consider as part of a financial assessment are;

- Your financial resources
- Your outgoings
- The financial needs of the child or young person.

Regulation 7 (*C.A 1989 S.G Regulations 2005*) makes specific provision in regard to financial provision for special guardians who were formerly foster carers for a child or young person. The general principle underpinning the regulations is that financial support should not include any element of remuneration but former foster carers are exempted from this for a period of up to two years. In exceptional circumstances such an element may continue beyond 2 years. The benefits of permanency are the driving principle.

If you are already a foster carer for the child or young person, you are likely to continue to receive the same amount of financial support that you currently receive as a foster carer (minus Child Benefits, tax credits or any other universal benefits that you would then be able to claim in relation to the child or young person as their Special Guardian) for at least 2 years. This will be confirmed with you in writing within a Special Guardianship Plan before any Order is made.

If you are a foster carer for an independent fostering agency please also feel able to talk with us about financial support which may be made available.

### **Will the child/ young person in my care still be entitled to Leaving Care Services?**

A young person who is the subject of an Special Guardianship Order will likely still 'qualify' for 'advice, guidance and assistance' from leaving care services. (*C.A 1989 Planning Transition to Adulthood for Care Leavers Regulations and Guidance 2011 Vol 3*)

For a young person to be eligible they must be;

- Between 16 and 21;
- If they are under18 the SGO must still be in force;

- If they are over 18 it must have been in force before they reached 18. ( Vol 3 2.12)

The Local Authority would be responsible for providing advice and assistance under these provisions but it may be, if you live some distance from Rochdale arrangements are made for you to seek such support locally.

The advice and assistance that a local authority can provide for a young person is outlined in C.A 1989 (24A) on the basis of a needs assessment. A local authority may provide advice and befriending services and in exceptional circumstances give cash. A local authority can also contribute to expenses for education, training but, if agreed, this is likely to be conditional and may take your financial situation into account. In some circumstances the Local Authority may also include birth parents in terms of these considerations if they are still involved in the young person's life.

### **Will the child/ young person in my care still be entitled to Pupil Premium to help them at school?**

Yes. Schools receive Pupil Premium for all Cared For children and young people of compulsory school age and this has now been extended to include children and young people subject to Special Guardianship Orders so they will continue to receive this support with their education.

### **Will I have access to independent legal advice before making a final decision?**

If the Local Authority is supporting you in making a Special Guardianship Order application we will encourage you to seek independent legal advice and will usually provide some financial support to help enable you to access this.

### **Good practice principles adopted by the Local Authority in relation to supporting a foster carer in applying for a Special Guardianship Order**

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The decision to apply for an SGO should be based on what is right for the individual child or young person and their foster family and the Local Authority does not have a blanket policy of encouraging foster carer to apply for SGOs for children or young people who are placed in their care.

The care planning process with a view to the most appropriate permanency outcome must be the underpinning aspect of any application for a Special Guardianship Order.

Children and young people are not be placed 'with a view to a Special Guardianship Order' before they have 'time – established relationships' with the foster family. The exception to this in respect of family and friends foster carers who may not necessarily always know the child or young person well but would know them and their family by definition as a Connected Person.

The Local Authority will agree in writing with you, in consultation with the Independent Reviewing Officer appropriate level of support.

Contact arrangements with birth family, including siblings, will be part of the discussions before any application is made. Where it is agreed that ongoing contact is in the best interests of the child or young person, you will be encouraged to see this commitment as a binding agreement on behalf of the child or young person.

The Local Authority recognises that there may also be circumstances where continuing support (other than financial support) is necessary for some special guardians. This might be in relation to a specific aspect such as contact with the birth family.

### **Who can I contact to find out more about becoming a Special Guardian?**

Your Supervising Social Worker will be able to give you advice and signpost you to other sources of advice. As can the child or young person's allocated Social Worker. Additionally, as a member of Fostering Network you will be able to contact that organisation for advice.

The End