

Local Government &
Social Care
OMBUDSMAN



Firm foundations:
complaints about
council support and
advice for special
guardians

May 2018

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Ombudsman's foreword



A stable and secure home life is essential to give children the best possible start. Where children cannot live with their birth parents, local councils have an important role in supporting others, often friends, grandparents or family members, to step in and provide that security.

Special Guardianship Orders (SGOs) are one of the options that can be used to formalise those arrangements, to give certainty and stability for everyone involved. SGOs are a half-way house between foster care and adoption arrangements. They can be particularly helpful in giving children more long-term certainty than fostering, especially if adoption is not appropriate. In practice, they are also usually a cheaper option for councils than residential or foster care.

Since 2010 there has been a steep increase in the number of SGOs made. Analysis in 2016, showed that more than 5,300 SGOs were made in 2015, which was 81% more than in 2011. The number of complaints we investigate is relatively small compared to the total number of SGOs, however it is also increasing, and we have seen some significant repeated mistakes being made in this area.

In 2017-18, we completed 322 detailed investigations into complaints about special

guardianship orders and wider fostering and child protection issues. We upheld seven out of 10 of the complaints we investigated. This is significantly higher than the average uphold rate for all areas of our work, which was 57%.

Government intended special guardianship as one way to give a firm footing on which to build a lifelong relationship between the child and their carer. We want to strengthen these foundations by sharing the lessons about special guardianship from our investigations.

The complaints we look at often involve faults that have long-lasting consequences. Many are about the long-term financial support councils provide, and how they have incorrectly calculated, changed and cut allowances.

We have also investigated complaints from people not being given the right support and information to make an informed decision about becoming a special guardian. Often, these people are extended family members, taking on a relative in the aftermath of a crisis – they do this willingly out of love, but sometimes are not properly told about the long-term implications.

In one case, a teenager wanted to look after her siblings when their mother no longer could. Despite being a young, vulnerable person herself, the council failed to give her the right support to help her do this. It had instead advised her to seek legal advice rather than giving her simple, practical help.

We published a report, *Family Values*, in 2013 which looked more widely at the issues we were seeing involving 'kinship carers' – people who look after the children of relatives and family friends. One of the case studies in that report showed how special guardians were losing out because the council was not paying the special guardianship allowance at the same rate as its fostering allowances. Unfortunately, five years later, we are still seeing complaints highlighting the same problem.

Alongside this report we are publishing a case of another council using a similar faulty allowance policy. Unfortunately, many carers in the council area have suffered injustice for many years. However, I credit the council concerned for pledging to review the cases of all people affected and to backdate the correct allowances to the time of our 2013 report.

For this report, we reviewed all the complaints we upheld about SGOs between 2015 and 2018. The case studies we have highlighted include best practice points to assist councils to follow the right steps when working with special guardians. This report should also help advice organisations and others working with special guardians to give them the right advice and support.

Many of the investigations set out in this report have resulted in councils taking hugely positive steps to improve practice – and I warmly welcome the constructive learning culture that many of those authorities have demonstrated. They've developed new information and policies, provided an improved service to potential and current guardians. They've also improved support and guidance for frontline social workers who are at the heart of this issue.

We hope these examples will enable all councils to review their practice and make sure these crucial people get the firmest of foundations in their valuable role as special guardians.



Michael King

**Local Government and
Social Care Ombudsman**

May 2018

Background

The Adoption and Children Act 2002 sets the legal framework for special guardianship under the Children Act 1989. A Special Guardianship Order (SGO) appoints someone to be a child's special guardian. Former foster carers and extended family members such as grandparents often apply to become special guardians. A child's birth parents cannot be a special guardian. Statutory Guidance, updated in January 2017 explains how councils should use this framework.

Councils play a central role in the SGO process. Someone who wants to become a special guardian must usually tell their council about this three months before they apply to court for an order. The council must then investigate and prepare a report to the court about their suitability to be a special guardian. We cannot investigate court actions or what happens in court. That means, for example, we cannot investigate reports that councils prepare for courts about potential special guardians.

If the court awards an order then the special guardians become responsible for all day to day decisions about the child. We have upheld complaints where councils have failed to properly set out support arrangements or work with guardians to plan the support they will need.

Councils must help meet the needs of special guardians in their area. This can include offering financial support, counselling, advice, and information. It might include help, including mediation, to help special guardians meet a child's special needs. Councils must help children and families to use mainstream support services and explain any extra help they can get. Councils must consider what services are already available for parents in their area and plan appropriate support for special guardians accordingly.

Government guidance says special guardianship arrangements should not fail just because of financial problems. Financial support should be paid to help secure a suitable arrangement where this is not possible because of a financial obstacle.

Special guardianship regulations explain when councils can pay support to a special guardian or prospective special guardian. This includes situations where it is necessary for the guardian to look after the child, where the child has special needs with extra costs and where necessary to adapt or alter a home. These are decisions for the council to make, based on its understanding of the situation.

Regulations say councils must consider other benefits available to the guardian and child, the guardian's financial resources, the amount of money they realistically need and the child's financial needs and resources. This is called means testing.

Councils should have regard to the amount of fostering allowance that would have been paid if the child had been fostered when deciding what to pay. A means test should use this maximum payment as a basis for decisions. As foster carers cannot have child benefit and child tax credit, councils usually take off an amount from the fostering allowance when calculating the maximum available special guardianship allowance before means testing.

Where special guardians were previously approved as foster carers, councils must pay them the fostering allowance for up to two years after the order is made.

Councils must review the financial support they pay the special guardian annually, and when there is a relevant change in their or the child's circumstances. If a council then proposes to reduce or end financial support it must allow the special guardian to comment.

Councils can use the non-statutory Government Guidance called the Standardised Means Test Model for adoption and special guardianship financial support. However, they do not have to and can devise their own system, so long as it complies with the Regulations and statutory guidance.

After deciding to provide support services, councils must explain this to the special guardian. They must explain how they calculated support, how much and how often it will be paid, what conditions apply and how it will review support in future.

Complaints to the Ombudsman

In 2017-18, we received 2,046 complaints and enquiries about local authority children's services, which includes complaints about special guardianship. This is 11% more than we received in 2016-17.

We upheld seven out of 10 of the complaints we investigated about children's services in 2017-18. The average uphold rate for all areas of our work was 57%.



Common issues and complaints

1. Poor advice to potential special guardians - including financial matters

Becoming a special guardian is an important step with long-term, life changing consequences for children and guardians alike. Statutory guidance sets out clear expectations on councils to consider what support guardians need and, where necessary, prepare a plan setting out what should happen, how support will be evaluated and reviewed.

We have investigated several complaints where councils have not backed up verbal advice with written information about the consequences of becoming a special guardian. We have also found examples where councils have given the wrong advice, such as telling someone they could not be their sibling's special guardian.



Mark and Alison's story

Mark and Alison were the foster carers of their grandchildren. The council encouraged them to take the step to become special guardians. Social workers gave them the impression the council would keep paying them the same amount as their fostering allowance until the children turned 18.

At the same time as Mark and Alison were considering becoming special guardians, the council was changing its policy of financial support for special guardians. The new policy was to normally only pay special guardians an allowance for two years. The policy change was very poorly communicated, if at all, to frontline staff or prospective guardians.

The couple became special guardians and decided they needed to move into a larger house with enough space to look after their growing family.

There were several conversations between the couple and various social workers, who gave some verbal advice. Our investigation found the council gave confusing and mixed messages about what, if anything, it could do to help, and none of it was in written form. The couple made important decisions without getting anything in writing from the council.

We found the council delayed in investigating Mark and Alison's complaint through the statutory children's procedure. There were serious and repeated faults in the council's record keeping and its communication with Mark and Alison.

The council could not show what, if anything, it told them about changing its policy for financial support, when the change happened, or whether it could help the couple move to a new house. This left Mark and Alison confused and uncertain.

How we put things right

Following our recommendations the council:

- > told staff about the importance of keeping good records, particularly on the advice they provide at each stage
- > developed a new information leaflet for potential special guardians clearly explaining the SGO process, and including a helpful case study to show what should happen
- > developed an SGO practice guide for social workers, setting out a flowchart of the process from start to finish. The guide simply and clearly explains the role of the court, the importance of assessment visits and key information this should cover with potential guardians.

Learning point

Developing clear, accurate and user-friendly information for potential guardians and frontline staff minimises the risk of misunderstandings and mistakes. People thinking about becoming special guardians need clear and unequivocal advice as soon as possible.

They may need time to reflect on what is said so putting advice in writing, as well as in person, can help them make informed choices. Making sure potential guardians know about financial support at the outset is important, so they can think about options at an early stage.

The SGO guidance for staff and guardians this council produced because of our investigation is best practice, and helps social workers and guardians navigate through the process with more confidence.

Julie's story

Julie started to look after her half-siblings while she was in her teens and still designated a young person herself. Unfortunately, their mother could no longer look after them. She soon started to have housing and financial difficulties and asked the council for help. It told her to get legal advice about becoming the children's special guardian, but the council did nothing practical to help Julie with this.

The council later had a referral about the children's wellbeing. It carried out an assessment, which said it should help Julie give the children more stability and security. It also said the council should explore options so Julie could take legal responsibility for the children.

The council then did not give Julie the help its assessment had recommended. It wrongly told Julie she could not be the children's special guardian because she was a family member. The law says only parents of children cannot be their special guardian; it does not prevent siblings.

Our investigation found the council did not give Julie, when still a young, vulnerable person herself, the help and advice she needed to become a special guardian. It did not help her to use a solicitor or help her be confident when applying. It gave her the wrong advice at a crucial time.

Julie eventually became the children's special guardian despite the council's lack of help.

How we put things right

Following our recommendations the council:

- > looked again at what financial support it could give Julie and carried out a fresh assessment to help decide this
- > changed the information it gives social workers so there are no mixed messages about what families are entitled to, and about who can become a special guardian

Learning point

Make sure frontline staff dealing with young people who could be special guardians have the right advice. Where older siblings, who may themselves be vulnerable, may become special guardians, councils should think about how to help them make a properly informed and supported choice. Consider whether frontline social worker staff for this type of vulnerable young person have the right advice and support to give appropriate guidance.

Common issues and complaints

2. Getting support needs right for a child subject to SGO

Where support is more than simple advice and information, or a one-off, councils must prepare a Support Plan for special guardians and keep this under review. The plan must set out services, when they will be provided, how this will be kept under review and by whom.

The plan must be plainly written so everyone affected can understand. Councils must share the plan with special guardians and consider what they say about it before they finalise it. Councils must consult special guardians about any changes they want to make to the plan.

We have found evidence of confusion caused by councils not sharing final versions of plans, failing to carry out regular reviews, and plans not being clear about the support to be provided. We have found examples where guardians are left unclear about what support they will get, and for how long, after becoming special guardians.



Damian and Kasia's story

Damian and Kasia were special guardians for Kasia's young granddaughter. The council didn't tell them anything about the option to get legal advice at an early stage before getting an SGO. It didn't give them any written information about what support they might be able to get as special guardians.

When the couple became special guardians, it seems the council told them they would keep receiving funding to help them until their grandchild grew up. It did not tell them it would keep that funding under review and it might stop, depending on their circumstances. Its advice leaflets at the time did not say anything about annual reviews. The couple assumed they would keep getting financial support until the child was 18.

Our investigation found the council did not give them clear or consistent advice as special guardians, so they could not make informed choices.

The council's special guardian support plan also said it would pay nursery fees for two years. The child stopped going to nursery eight months before the two years ended. The plan was confusingly worded about whether it was then able to support all child care costs or just nursery costs.

The support plan was also not clear on what support the council would give Damian and Kasia to maintain contact with their granddaughter's birth parents. The plan said the couple had to make sure this contact happened but it did not explain what, if any, funding was available from the council to help with this.

How we put things right

Following our recommendations the council:

- > made a payment to Damian and Kasia, apologising to them for failings in its support plan
- > changed how it works to ensure future support plans are much more specific about what is expected from special guardians, and are clearer about any funding that's available to them, for how long, and how they would review this.

Learning point

Give special guardians as much clear advice as possible early on.

Make sure they understand what support is available, what conditions are attached to this support and how the council will keep it under review.

Alex and Sophie's story

Alex and Sophie, a retired couple, started to look after their granddaughter at short notice. The council asked them to do so because of a crisis involving her birth parents.

Several years later they applied to become special guardians. The council shared a draft support plan with the couple that included funding for an annual two week residential summer holiday for their granddaughter. This version of the plan did not set a financial limit on what the council would pay for the holiday. The couple agreed this version of the plan.

The council's decision-making panel agreed to a different version of the support plan that set limits on holiday costs well below the likely real costs. Council records were very unclear about whether the couple had any chance to see this version. The court then made Alex and Sophie special guardians but the council's report to the court did not mention this financial limit for holiday costs.

Over the following years the council did not review the couple's special guardian support plan. It then refused to pay for the cost of the holiday one year because it was higher than the amount it had set.

Our investigation found the council gave an open-ended commitment to the couple to fund an annual two week holiday. It was not clear which version of the plan the council shared with Alex and Sophie. It did not tell them or the court its decision to impose a cash limit. It did not sign or date their final support plan. It did not carry out regular reviews of the plan or visit the couple at all for two years.

We found the council's arbitrary financial limit was not realistic for the type of holiday the support plan said was needed.

How we put things right

Following our recommendations the council:

- > paid the full cost of a two week holiday at the holiday centre for their granddaughter
- > met with Alex and Sophie to assess their current needs and circumstances, reviewing their support plan, making sure it kept proper records of this
- > agreed all future payments to the couple would cover the full cost of the suitable holiday as set out in the support plan agreed in court
- > agreed to continue to provide financial support and schedule regular reviews until the end of the granddaughter's full time education or training
- > ensured all future special guardian support plans clearly specify services to be provided and how much would be paid. It also would ensure regular reviews of financial support and other services, considering the needs of the child and special guardian

Learning point

It is vital councils share any updates and keep accurate, clear records about what version of the plan is current and has been shared with guardians. Regular contact to review plans is crucial to making sure they reflect current needs. Where specific cost limits are used, councils must make sure they are realistic and based on the actual cost of delivering what a support plan requires.

Common issues and complaints

3. Wrongly calculating, changing or cutting special guardianship allowance

Government guidance says special guardianship arrangements should not fail just because of financial problems. Financial support can be paid to special guardians to help them after an order is made.

Where councils assess a special guardian's need for financial support they must take account of benefits the guardians and child can receive, the guardian's financial resources, their outgoings and commitments and the financial needs and resources of the child.

Guidance and case law (*R v Kirklees Council*, 2010) has found councils should have regard to the amount of fostering allowance they would pay. Councils must not pay special guardianship allowance as a fixed percentage of fostering allowance without any justification. A second case in 2012 (*R v London Borough of Merton*) found councils should use the National Fostering Network's minimum allowances as a starting point for calculation. In that case the council's use of giving an allowance set at two thirds of the Fostering Network's minimum was unlawful.

We have found examples of councils who have not set out clear guidance on how they calculate allowances, faulty council policies and a council that failed to pay special guardianship allowance at the same rate it paid fostering allowance as the law requires.



Natalie's story

Natalie was special guardian to her grandchild when, in 2011 she drew the council's attention to problems with its allowance policy. She said the council was paying an allowance based on only 25% of core fostering allowance. She pointed out the recent case law that said this might be unlawful.

The council did not change its policy although it dealt with her complaint at that time. Later in 2015 she became special guardian to two more grandchildren. The council calculated her special guardianship allowance, again using a policy that was based on paying the allowance based on a fixed percentage of its fostering allowance.

Natalie and her representative complained again about the flawed policy. Despite realising the problem, the council took over a year to get legal advice and put in place a lawful policy to calculate special guardianship allowance.

Our investigation found the council's policy had been incorrect since 2010, when case law established allowances should not be calculated as a percentage of fostering allowance. We said the council missed an opportunity to put things right when Natalie drew its attention to problems with its policy in 2011. We also pointed to our earlier focus report in 2013 – Family Values – which highlighted this problem and drew councils' attention to relevant case law. We said this was the point from which the council should put things right and backdate payment for Natalie and all the other special guardians affected by this fault.

How we put things right

Following our recommendations the council:

- > agreed to identify all existing special guardians affected by the fault.
- > agreed to calculate and backdate their payments from November 2013 onwards using the correct new policy, including to Natalie.

Learning point

This is an example of a fault we previously highlighted in a focus report and case law. We asked councillors on scrutiny panels to look at their council's policy on this matter.

All councils should review their special guardianship allowance policies to ensure they are not making the same mistake and are paying special guardians the right allowance.

Councils should also review how they are getting up to date advice on relevant case law and how they use our focus reports as a source of information.

James and Marjorie's story

James and Marjorie were made special guardians for their nephew and niece in 2014. They did not see their support plan until it had been finalised. In the plan, the council agreed to pay James and Marjorie an allowance amount equivalent to their flat rate for foster carers. This was because the council only paid a flat fee to special guardians. It did not use discretion to decide if they needed more help and support where necessary and appropriate.

It quickly became clear the children had serious needs because of traumatic events they had experienced in the past. This included being exposed to sexualised behaviours when living with their birth mother. They told James and Marjorie about what had happened during their childhood. The council then took too long to identify any training needs or put appropriate training in place for the couple to deal with the situation.

When an independent social worker reviewed the support the couple needed, the council said it could not fund what was needed because it only paid a flat fee to special guardians.

Our investigation found this was wrong because the council had not properly considered whether to provide more financial support, taking account of the special circumstances of the two children. It had fettered its discretion by only paying them a flat fee. We also found the council had failed to make the right referrals to services or involve relevant professionals to provide necessary support to the family.

How we put things right

Following our recommendations the council agreed to:

- > identify appropriate training for James and Marjorie so they can meet the children's needs
- > decide what financial support the couple need, taking proper account of their circumstances.

Learning point

Councils should always avoid fettering their discretion to reflect the special circumstances of a case when deciding about payment of special guardianship allowance.

Alistair and Maisie's story

Alastair and Maisie started to look after a baby shortly after he was born because his mother could not look after him. The council placed the baby with them under an emergency placement.

The council started to talk to the couple about becoming special guardians shortly afterwards. It asked them to get independent legal advice and discussed what allowance they might get. They decided they wanted to become special guardians. They knew they would get an allowance based on the fostering allowance they were already getting and that it would be means tested.

The council did not have a clear, written policy on means testing for payment of its special guardianship allowance.

This meant Alastair and Maisie were not clear on how the council calculated the support they would receive. They said they might not have agreed to become special guardians if they had known about the financial implications.

Although councils do not have to calculate allowances in a specific way, our investigation found this council at fault for not having a published policy. Although this would only have given Alastair and Maisie an estimate of what might have been payable, they could have used this to make decisions.

How we put things right:

Following our recommendations the council:

- > developed a concise, clear, written explanation of how it means tests for special guardianship allowance. This includes how it makes allowances for transport and other household costs.
- > produced a flow chart for social workers on special guardianship explaining the process for assessing support, and how this relates to development of a support plan, and the process of going to court for the order.

Learning point

Councils should publish a clear, simple explanation for how they will calculate any allowance. This should set out what factors will be considered. This means potential guardians can be clear, up front, about what support they might have.

While remedying the individual injustice is an essential element of what we do, we also have a wider role to help councils tackle systemic failures and improve the way they deal with complaints. In many cases we will ask councils to consider whether other people are currently, or could be affected by the same issues raised in a complaint.

Good Practice: Getting it right first time

Drawing on findings from our casework we have identified some recommendations based on the learning from our investigations. The following is not an exhaustive list but sets out some of the positive steps councils can take:

- > Give early, clear and unambiguous advice to people who are considering becoming special guardians. Consider how this can:
 - explain what is special guardianship and what this means for parental responsibility, legal security and stability
 - explain the council's role and that of the court
 - set out who can apply to be a special guardian and what alternatives could be more suitable
 - make the process of applying to be a special guardian clear, including the role of the council in writing a report to court
 - explain the assessment process before becoming a special guardian. Explain that applicants may need to complete some training
- > Be as clear as possible about the support that might be available and how the council will assess the applicant's support needs
- > Be as unambiguous as possible about the fixed term duration of support and what it is likely to be used for.

(The above has been drawn from actual guidance prepared by a council in response to our investigation)

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- > Back up verbal advice and guidance in writing wherever possible, particularly where this may have long term consequences
 - > Manage expectations early on, for example where special guardians expect ongoing support or help with major personal expenditure
 - > Be as clear as possible with applicants that any support may be time limited
 - > Develop advice for social workers involved in supporting potential and actual special guardians. This could include:
 - a flow chart showing responsibilities at key stages such as suitability assessment, financial assessment, permanence panel and court
 - a checklist of things to cover at first assessment visit (for example explaining the process and financial situation)
 - a summary of the SGO assessment process including child information (for example attachment issues and any early neglect or trauma), carers information (for example current relationship and stability)
 - > Keep clear and transparent records of contact with special guardians. This is always important, particularly where guardians will probably be supported by several different social workers and other officers over several years
 - > Write support plans that are clear, in plain English and set actions that are as specific, measurable and achievable as possible so the council and guardian can review progress
 - > Make sure support plans:
 - are shared, discussed and agreed with special guardians, and this is well documented
 - are written so that they are easy to evaluate and keep under review. It should be easy for the council and guardian to decide whether all the support has been provided
 - are regularly reviewed and kept up to date. Make sure plans continue to meet the child's needs as they change
 - set out the approach to calculating special guardianship allowance. Explain this at the earliest stage as possible, making clear this will be reviewed and depend on evidence of continuing needs
 - keep the best interests of the child at the forefront of decision making.

Encouraging local accountability – questions for scrutiny

We want to share learning from complaints brought to us with locally elected councillors who have the democratic mandate to scrutinise the way councils carry out their functions and hold them to account.

We believe complaints raised by the public can be an important tool and source of information to help councillors identify issues affecting local people. Complaints can therefore play a key part in supporting local public service scrutiny.

Our experience has highlighted several key questions elected members could ask officers when scrutinising children's services around special guardianship issues:

- > How does the council calculate special guardianship allowances? Is this in accordance with statutory guidance?
- > Are decisions about support to special guardians being made based on the child's needs as opposed to blanket financial constraints?
- > What advice do prospective special guardians get before having to make key decisions about what to do?
- > How does the council manage social work caseloads to minimise the negative impact of frequent changes in social work support for special guardians and children?
- > What complaints have been made to the council about special guardianship? What are the outcomes and how has the council used them to improve its services?
- > How has the council learnt from best practice from other areas in the support it gives to potential and actual special guardians?

We would encourage councillors to look at the issues highlighted in this report, as well as the complaints raised locally, to ensure their special guardianship policies receive proper and effective scrutiny and that those services are accountable to local people.

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