



Special Guardianship Order Policy and Procedures (Draft February 2021)

1. Introduction

Special Guardianship offers an option for children needing permanent care outside their immediate birth family. It can meet the needs of children, who need a sense of stability and security but who would benefit from a level of ongoing contact with their birth family, which is usually not associated with adoption.

Special Guardianship aims to:

- Give the carer clear responsibility for all aspects of caring for the child
- Provide a firm foundation on which to build a lifelong permanent relationship between the child and their carer
- Provide legal security
- Preserve the link between the child and their birth family
- Allow access to a range of support services

A Special Guardianship Order offers greater stability and legal security to a child than a **Child Arrangements Order**, such as providing the carer with a greater level of parental responsibility. However, when determining what type of Order is the most preferable option, for permanent care, the needs of the child are the paramount factor in decision making.

Special Guardians have **Parental Responsibility** for the child and, whilst this is shared with the child's parents, the Special Guardian has the ability to exercise this responsibility without seeking permission from the parents (in most circumstances).

A Special Guardianship Order made with respect to any child who is the subject of a Care Order or a Child Arrangement Order would discharge those orders. A Care Order, however, does not automatically revoke a Special Guardianship Order although the Special Guardian's exercise of Parental Responsibility would be restricted as the Local Authority would have the primary responsibility for decision making under the Care Order.

Special Guardianship Orders can be varied or discharged, by further application to the court. However, the thresholds for revoking a Special Guardianship Order are higher than a Child Arrangement Order. A birth parent can only apply for a Special Guardianship Order to be overturned where the court has granted permission for the application because the parent has been able to demonstrate a significant change in circumstances.

2. Who May Apply?

Applications for Special Guardianship may be individual or joint. Joint applicants do not need to be married. Special Guardians must be 18 years old or over and must not be a parent of the child in question.

Subject to giving notice to the relevant Local Authority, 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 Arrangements Order as a person with whom the child is to live
- Any person 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 a period of at least three years (which need not be continuous, but must not have begun more than five years before, or ended more than three months before, the making of the application)
- A relative or foster carer with whom the child has lived for a period of at least one 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 he or she has the leave of the court to make the application.

The court may also make a Special Guardianship Order in any family proceedings concerning the welfare of a child; this applies even when no application has been made and includes adoption proceedings.

3. Parental Responsibility

The Special Guardian will have **Parental Responsibility** for the child and, subject to any other order in force, will have clear 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. The Special Guardian must also take reasonable steps to inform the parents if the child dies.

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

- Causing the child to be known by a different surname, or
- Removing the child from the United Kingdom for longer than three months

The court may, at the time of making the Special Guardianship Order, give leave for the child to be known by a new surname and/or to be removed from the United Kingdom for longer than three months, either generally or for specified purposes.

For the avoidance of doubt, a child is any child or young person under the age of 18 years.

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

An eligible Applicant (see section 2) can make a freestanding application to the court for a Special Guardianship Order. In doing so, they must give three 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 be sent to the Local Authority for the area where the Applicant resides. The Local Authority receiving the notice will then have a duty to provide a report to the court. The only exception to the requirement for three months' notice is where the court has granted leave to make an application and waived the notice period.

A Local Authority may choose to apply to the court within Public Law Proceedings (as part of its final care plan) or after a Care Order has been granted, where the Local Authority determines that Special Guardianship is the most suitable permanency plan for a child.

The Local Authority may encourage and support an application from an eligible applicant for a child known to the Local Authority but for whom they do not share Parental Responsibility, where the Local Authority determines that the Special Guardianship Order would be the most suitable plan for the child as an alternative to care proceedings.

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.

5. Responsibility for Making the Application

Freestanding applications e.g. for children not previously known to the Local Authority or for applications not supported by the Local Authority, should be made by the applicants' legal representation. The prospective Special Guardians will need to instruct their own solicitor to draft the application and represent them in the court proceedings.

Applications agreed by the Local Authority for children not currently Looked After by the Local Authority should be made by the applicants' legal representation. The prospective Special Guardians will need to instruct their own solicitor to draft the application and represent them in the court proceedings.

Applications for children subject to a Care Order or Interim Care Order should be made by the Children's Services' legal department. The legal department will then draft and submit the application upon receipt of the reports, statements and plans completed by the social workers.

6. Responsibility and Process for Completing the Assessment

Applications for any Child not previously known to the Local Authority:

Upon receipt of the 'Notice of Intention' from the applicant of the court, the Local Authority will allocate a Special Guardianship Social Worker from the Adoption Team.

The allocated Social Worker (SW) will contact the applicants to discuss the assessment process, provide them with the relevant guidance and discuss available support within **two weeks** of the receipt of the notification.

The allocated SW will progress the assessment by meeting with and gathering information from the applicants, the child/ren, the birth parents and any other relevant adults or children and completing all necessary checks.

The allocated SW will complete the **SGO/Connected Person Assessment Report** and identify the required package of support and record this in the **Support Plan** (see Support Offer) within **12 weeks** of receipt of the notification.

Once approved a copy of the report and plan should be provided to the applicants, who may wish to further consult their independent legal advice regarding the assessment and support offered.

The assessing Social Worker will be the principal author of the report, but may ask other professionals to contribute.

The assessing Social Worker should be prepared to attend court as required in respect of the application.

Freestanding application from a Foster Carer:

Where the child is Looked After but the Local Authority has not identified Special Guardianship as the plan for the child, the carer will need to make a freestanding application for an SGO. Again, the carers should be advised to obtain their own independent legal advice in relation to their legal options.

The prospective Special Guardian should then write to the Manager for Looked After Children and should include the following information:

- Their name and address
- The name and date of birth of the child
- The child's Social Worker's name and office details
- Their Supervising Social Worker's name

The letter should also include a statement to notify the department of their intention to apply for a SGO. The applicant must give written permission for statutory checks to be undertaken and should sign and date the letter.

The **Notification** will be formally acknowledged by the Manager for Looked After Children and forwarded to the child's Social Worker and the foster carers' Supervising Social Worker within **two weeks** of the receipt of the notification.

The child's Social Worker should then (**within two weeks**) request a Legal Planning Meeting with the Manager for Looked After Children and Children's Services' legal department to determine whether the Local Authority is in agreement with the proposed SGO. A member of the Fostering Team should be invited to the meeting and the IRO should also be consulted for their views, prior to the meeting taking place.

If the Local Authority is in agreement with the application a Social Worker from the Fostering Team, will be allocated, to lead the completion of the assessment and support plan, in conjunction with the child's current Social Worker and the foster carers' Supervising Social Worker.

Once approved, a copy of the report and plan should be provided to the applicants, who may wish to further consult their independent legal advisor regarding the assessment and support offered. The prospective Special Guardians will need to instruct their own solicitor to draft the application and represent them in the court proceedings.

If the Local Authority opposes the application, legal advice should be sought as to what action the Local Authority could take.

The Fostering Social Worker will be the principal authority of the report. However, the child's Social Worker and the carers Supervising Social Worker (if applicable) are also expected to contribute. The child's Social Worker should also make their own recommendation as to the outcome of the assessment, as required.

All Social Workers should be prepared to attend court as required in respect of the application.

Applications for Children and Families known to the Local Authority:

- **Applications within Public Law Proceedings or Pre-Proceedings (PLO):**
The decision to pursue an application for a SGO will be agreed with the applicants and the Local Authority through the pre-proceedings (PLO) process or following a Legal Planning Meeting, if there has been no period of PLO.

A member of the Fostering Team should be invited to the initial Legal Planning Meeting to discuss and agree any carer assessment needs.

Once a potential Special Guardian/Connected Person has been identified, the allocated child's Social Worker will complete a **Screening Call** within 24 hours (or as soon as possible if weekend/public holiday). If this is positive, then the child's Social Worker should complete an **Initial Viability Referral** form for the carers and email these to the Fostering Team Manager, Fostering Advanced Practitioner and Children's placements email.

The child's Social Worker will then arrange a home visit, within seven working days of the positive screening, with a Social Worker allocated from the Fostering Team to progress the **Viability Assessment**.

The child's Social Worker and fostering Social Worker will complete the **Initial Viability Assessment** form and agree the most appropriate outcome within five working days of the visit.

The **Initial Viability Assessment** will consider whether it is viable to proceed with a SGO Assessment. If this is not appropriate, the assessment will consider if a Connect Person assessment is more suitable.

Upon the completion of a positive Initial Viability Assessment, a Social Worker from the Fostering Team will be allocated within two working days, to progress the assessment.

The allocated Social Worker from the Fostering Team will lead the Assessment and, in collaboration with the allocated child's Social Worker, will complete the **SGO/Connected Person Assessment** and **Support Plan** within **12 weeks**.

Planning Meeting (Part 1) to be held within 1st week of allocation to ensure that assessment is planned for completion within 12 weeks. Meeting to be attended by Assessing Social Worker and Child's social worker and chaired by Fostering AP.

Planning Meeting (Part 2) to be held in 6th or 7th week of assessment and attended by Assessing SW, SGO Support Worker and Child's SW chaired by Fostering AP to review assessment, discuss training needs and draft support plan including financial assessment

The assessment report should be approved by the Team Managers for the respective assessing Social Workers.

The Support Plan should be approved by the Agency Decision Maker, but may be delegated to a Strategic Lead in their absence.

Once approved, a copy of the report and plan should be provided to the applicants, who may wish to seek independent legal advice regarding the application and support offered.

The final agreed Assessment Report and Support Plan should be submitted two days before the Legal Planning Meeting 2 to the chair of the LPM2.

A copy of the approved and agreed Assessment Report and Support Plan must also be sent to the legal department to accompany the Final Evidence and to enable them to prepare an SGO application (if required).

- **Applications for a child subject to a Care Order with the agreement of the Local Authority:** An application for a Special Guardianship Order is a permanence option for the child and must be evaluated with the same thoroughness as any other permanence plan. The legal status of a child in

care should be considered at every Statutory Review and, for children in long term care, Special Guardianship should be considered as an option. Any decision to apply for a Special Guardianship Order should clearly be based on meeting the needs of the individual child.

Every effort must be made to involve the prospective applicants, birth parents and the child/ren in the planning process and to consider with them the reasons for making an application and whether it is advisable to do so. The prospective applicants must be advised of the role of the Local Authority in reporting and making recommendations to the court, including their duty to consider and report on other options that the court may wish to consider.

Where the review makes the recommendation that a Special Guardianship Order should be considered, the child's Social Worker should make a referral to the Children's Services' legal department and request a Legal Planning Meeting to discuss and agree the decision with the Manager for Looked After Children, within **two weeks** of the Review Meeting or other decision making forum. A member of the Fostering Team should be invited to the initial Legal Planning Meeting to discuss and agree any carer assessment needs.

The meeting should consider:

- The background and history
- The child's needs, wishes and feelings
- The legal context
- The outcome of any previous assessments and current relevant
- The overarching plan as agreed at the last Statutory Looked After Review
- The outcome of any Family Group Conference
- The wishes and feelings of the child's carers, parents and significant others
- The views of the department

It is recommended that an application for the discharge of the Care Order is made, asking the court as part of the application to replace the Care Order with a Special Guardianship Order.

The carer should be advised to seek independent legal advice in relation to their legal options. They need to consider the advantages and disadvantages of applying for an SGO compared to remaining a Foster Carer/Connected Person Foster Carer or whether applying for a Child Arrangements Order or Adoption Order would be more appropriate.

If the Foster Carer/Connected Person Foster Carer agrees to proceed with an SGO, the SGO/Connected Person Assessment and Support Plan will be completed by a Social Worker from the Fostering Team, in collaboration with the child's allocated Social Worker, the Supervising Social Worker for the Carer (if this is not the assessing Social Worker), and social worker from the SGO support team within **12 weeks** of the Initial Legal Planning Meeting.

The child's allocated Social Worker must also complete a **Statement of Evidence** in respect of the discharge of the Carer Order, within the same 12 week period.

Once the Assessment Report and proposed Support Plan are completed, a further Legal Planning Meeting should be held to ratify the decision and the Support Plan should be sent to the Agency Decision Maker for further ratification.

Once authorised, a copy of the Assessment Report, Support Plan and the Statement of Evidence should be sent to the applicants. The applicants can choose to seek further legal advice regarding the Assessment Report and/or Support Plan, if required.

A copy of the authorised Assessment Report and Support plan, along with the Statement of Evidence, should be sent to the legal department who will progress the application.

The FPT Social Worker will be the principle author of the report. However the child's Social Worker and the carer's Supervising Social Worker (if applicable) are also expected to contribute. The child's Social Worker should also make their own recommendation as to the outcome of the assessment, as required. All Social Workers should be prepared to attend court as required in respect of the application.

7. Support with Legal Costs

The cost of making the Application:

The Local Authority may contribute to the initial legal costs where it is in support of the application and it is deemed to be a suitable alternative to care proceedings.

The Local Authority will only consider contributing to the applicants' legal fees where the following criteria are met:

- The Applicant is **not** eligible for legal aid
- There **are** clear grounds for care proceedings
- The application **is** part of a plan made at a Child Protection Conference, Looked After Review or Legal Planning Meeting and **is** supported by the Local Authority

Any contribution to the legal fees will be at legal aid fees and must be agreed by Access to Resources Panel.

Once agreed, the Social Worker should request a letter from the Children's Services' legal department confirming our contribution. This letter should be provided to the applicant along with a list of local solicitors (if required) in a timely manner to enable them to instruct a solicitor and consult with them regarding the outcome of the Assessment Report and proposed Support Plan.

Legal Costs after the granting of the Application:

The Local Authority may also contribute to future legal costs that are associated with the Order to continue to support the existence of the Order, where the Local Authority considers this to be appropriate.

Any contribution to legal fees will be at the legal aid rates and must be agreed by Access to Resources Panel.

Once agreed, the Social Worker should request a letter from the Children's Services' legal department confirming our contribution. This letter should be provided to the applicant along with a list of local solicitors (if required).

8. The Assessment

The allocated Social Worker should complete the **SGO and Connected Person Assessment Template**, using the guidance information supplied with it, **within 12 weeks** of the decision or notification.

The Fostering Team Social Worker is the principle author of the report. However, the child's Social Worker and/or the carer's Supervising Social Worker (if different) should be asked to complete sections A and B of the report and verify the information contained within the final Report and Support Plan.

Any Social Worker or other professional who has contributed to the Assessment Report and/or Support Plan should be prepared to attend court to progress the application.

The current and future needs of the child and applicants must be considered and clearly recorded in the Assessment Report and the Support Plan.

Social Workers should ensure they meet with and gain the views of as many relevant adults and children as possible (the child, the applicants, the applicant's children/friends/relatives/employers/ex-partners, the birth parents, siblings, grandparents and other relatives, as well as other professionals, where possible).

The prospective Special Guardians should be made aware of the need to obtain the personal details of their family for inclusion in the Assessment Report. 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. over five years old) 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 are addressed.

Any birth parent not agreeing to the application should be advised to engage a solicitor as soon as possible.

The safety of the child is paramount and the background of prospective Special Guardians must be rigorously checked.

The Social Worker preparing the report is responsible for the completion and submission of all relevant checks (DBS, Medical, Local Authority, Probation, Health Authority, Education and CAF/CASS) and References (family members, friends, employment and/or ex-partner).

A DBS check should be completed on the applicants and all adults in the household over the age of 18 years. DBS forms can be obtained from the Business Support Team.

The court requires a report of each of the interviews with the persons nominated by the prospective Special Guardians to provide personal references for him/her, to accompany the Assessment Report and Support Plan. Reference checks can be requested using the appropriate letter template.

All applicants who are not already set up on LCS as carers and in receipt of payments, will need to provide their bank account details which should be sent as a request with their name and address details to set them up as a Special Guardian Carer and to ensure payments can be made.

9. The Support Plan

Local Authorities are required to make arrangements for the provision of Special Guardianship support services to promote and support the permanent placement of the child with his/her Special Guardian and ensure that all services are in place in order that the child's needs are met. Special Guardianship support services are defined as:

- Financial support (Regulation 3(1a))
- Services to enable groups of children for whom a Special Guardianship Order is in force or in respect of whom is being formally considered, Special Guardians and prospective Special Guardians and parents of the child to discuss matters relating to Special Guardianship (Regulation 3(1b))
- Assistance, including mediation services, in relation to contact between the child and their parents or relatives or any other person with whom the child has a relationship that the Local Authority considers to be beneficial to the welfare of the child (Regulation 3(1c))
- Therapeutic services for the child (Regulation 3(1d))

- Assistance for the purpose of ensuring the continuance of the relationship between the child and their Special Guardian or prospective Special Guardian, including training for the Special Guardian to meet any special needs of the child: respite care, and medication in relation to matters to Special Guardianship Orders (Regulation 3(1e))
- Counselling, advice and information (section 14F(1a) of the Act)

Bedford Borough's SGO Support Plan identifies some of the universal services accessible to Bedford Borough residents as well as numerous resources and organisations which are accessible to all, which it considers relevant to all Special Guardians and children.

The allocated Social Worker, in collaboration with the child's Social Worker and the carer's Supervising Social Worker (if applicable), should identify the needs of the individual child/ren, applicants and birth parents and clearly record them within the plan.

Consideration must be given to both the **current** and **future needs** that can be identified. If there are no identified needs, beyond those accessible to all, through universal services, the Social Worker should identify within the plan that "*there are no current or future needs identified at this time*".

Any identified needs which require the resources of another agency such as Health or Education must be agreed with the relevant agency prior to finalising the plan.

Any identified social care resource with cost implications should be agreed to Access to Resources Panel.

Wherever possible, the needs of the child, applicants and/or birth parents should be met through the provision of a universal or specialist service available to any child or adult requiring that service in the community.

Where a service is available within the community, the applicant should be signposted to that service and be provided with assistance to access the service.

Where an applicant or birth parent lives outside of Bedford Borough and are therefore not eligible for a Bedford Borough service, every effort should be made to signpost the child, applicant or birth parent to a relevant service in the area in which they live.

The views of the child, applicants and birth parents with regard to the Support Plan should be recorded. The Applicants should also be asked to confirm the level of support they would like to continue following the making of the Order and for how long. Their decision to agree a period of Child in Need and to be kept informed of relevant training and support should be clearly recorded within the Support Plan.

Once agreed and authorised, a copy of the Support Plan should be provided to the applicants to accompany the Assessment Report. The applicants should be advised to seek independent legal advice regarding the proposed plan of support.

10. Therapeutic (Counselling) Support

Should any therapeutic service be required for the child or young person, they may be additionally eligible for help via the **Adoption/SGO Support Fund**. The ASF is available for children up to and including the age of 21 years (or 25 years with a SEND Statement or EHC Plan) who have been adopted or are subject to an SGO, from Local Authority care and for Special Guardians who care for children who were looked after immediately prior to the Special Guardianship Order.

The Local Authority that places the child is responsible for assessing the adoption/SGO support needs for **three years** after the Order is complete. After three years, it becomes the responsibility of the Local Authority where the child and applicant live (if different).

Any request for an assessment should be sent in writing to the **SGO Support Team** at Bedford Borough Town Hall.