

# **Middlesbrough Council**

## **Special Guardianship Order**

### **Allowance Policy**

Date: June 2018

Review Date: June 2019

## Special Guardianship Order Allowance Policy

### Introduction

1. The purpose of this policy is to set out Middlesbrough Borough Council's ("the Local Authority") approach to Special Guardianship Order Allowances. The scheme of the policy is as follows:
  - legislative context;
  - eligibility criteria;
  - the allowance;
  - duties of notification by the Local Authority and by those in receipt of a Special Guardianship Order Allowance;
  - commencement of payment;
  - review, variation and termination of the allowance;
  - overpayments;
  - non-periodic financial support;
  - legal fees;
  - delegated authority;
  - appeals
2. This policy shall be reviewed [six months after it comes into force] [on the first anniversary of its coming into force] and thereafter at the discretion of the Local Authority.

### Legislative Context

3. The Special Guardianship Regulations 2005 (as amended by the Special Guardianship (Amendment) Regulations 2016).
4. The Regulations, supported by the guidance, govern the processes by which Local Authorities exercise their discretion in determining requests for special guardianship support services, including financial support. This policy relates to financial support only.

## Eligibility Criteria

5. Carers who are proposing to care for a child under a Special Guardianship Order, or who are caring for a child under a Special Guardianship Order, can request an assessment for support, including financial support, under the Special Guardianship Regulations 2005.
6. In accordance with Regulation 6 of the 2005 Regulations, a Special Guardianship Order Allowance **may** be paid;
  - to facilitate arrangements for a person to become the special guardian of a child/young person where the Local Authority considers such arrangements to be beneficial for the child/young person's welfare;
  - to support the continuation of such arrangements after a Special Guardianship Order is made;and where;
  - the Local Authority supports the placement of the child with the person(s) in whose favour the Special Guardianship Order is made; or
  - the Local Authority is satisfied, having regard to all the circumstances, that, but for the making of a Special Guardianship Order, the child would have become Looked After by the Local Authority; and
  - the Local Authority supports the placement of the child with the person(s) in whose favour the Special Guardianship Order is made.
7. Such support is payable in the following circumstances;
  - where the Local Authority considers that it is necessary to ensure that the special guardian or prospective special guardian can look after the child;
  - where the Local Authority considers 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. This applies where the child's condition is serious and long-term. For example, where a child needs a special diet or where items such as shoes, clothing or bedding need to be replaced

at a higher rate than would normally be the case with a child of similar age who was unaffected by the particular condition.

- where the Local Authority considers that it is appropriate to contribute to any legal costs, including court fees, of a special guardian or prospective special guardian, as the case may be, associated with-
    - the making of a special guardianship order or any application to vary or discharge such an order;
    - an application for an order under section 8 of the Act;
    - an order for financial provision to be made to or for the benefit of the child
8. Allowances are paid for the child/young person. Any extra payments are to cover the specific needs of the child e.g. for protection, safety etc. Support services should not be seen in isolation from mainstream services and it is important to ensure that families are assisted in accessing universal services. Special Guardians should be helped to access their entitlements to tax credits and social security benefits.
9. It is recognised that a foster carer might be able to provide permanency, which is in a foster child's best interests, but be deterred from applying for Special Guardianship because of the loss of the fostering allowance being paid in respect of the child. This policy seeks to address that concern by ensuring that a former foster carer has a period of financial stability upon becoming Special Guardian to a former foster child, at a minimum aligned with the period of adjustment afforded to family & friends carers and, subject to Head of Service approval, for an extended period in line with the foster carers financial situation.

#### Requests for financial assistance and assessments

10. A special guardian can approach the Local Authority (Middlesbrough) for financial assistance and/or support for a period of up to 3 years from the date of the making of the order.

11. If a request for financial assistance is made by a prospective special guardian of a child who is looked after by the Local Authority, or a special Guardian of a child who was looked after immediately before the making of the special guardianship order, (or such child or the child's parents) then an assessment will be carried out by the Local Authority's designated Finance Officer (Regulation 11(1) of the 2005 Regulations).
12. Requests for financial support from other persons (not falling within 11. above) will be considered, but unless the Local Authority is satisfied that there are exceptional circumstances, a financial assessment, including a means test, will not be conducted. It is not possible to specify the sort of circumstances which might be regarded as exceptional because case by case consideration is required. However, by way of example, if the Local Authority is satisfied, having regard to its history of involvement with the child, that the child would (on the balance of probabilities) have become looked after had the Special Guardian not stepped in to care for them, the Local Authority might consider that to amount to an exceptional circumstance warranting a financial assessment for support. In those circumstances consideration of financial support will be on the assessed needs of the child under regulation 12 (whereby the child's needs are deemed to be over and above those of a child of her/his same age) and the local authority considers that the award is necessary to ensure that the special guardian can look after the child with 'additional needs'.

### The Allowance

13. Special Guardianship Order Allowances are not generally paid, unless the child is (or was immediately before the Special Guardianship order was made) a looked after child. However, in exceptional circumstances where the child is not, and was not, looked after, the allowance may be payable. However, non-periodic financial support may, where it is considered appropriate by the Local Authority, be paid without an assessment of the means of the Special Guardian and/or the child (refer to paragraph 32-34 for further details).
14. Special Guardianship financial support is payable to the special guardian to care for the child and meet his/her assessed needs, irrespective of where the special guardian

is living i.e. including abroad. However, if the special guardian moves abroad from the UK, or is already living abroad when the child moves to their care, the level of allowance may be altered to take into account comparative costs of living in the country of residence. This will be assessed by reference to a comparison between the cost of a “basket” of everyday items such as groceries and clothing, housing costs and utility costs in the UK and the cost of the same or comparable items in the country of residence of the child.

15. The Special Guardianship Order Allowance will, as a starting point, and where the child **was** previously been looked after by the Local Authority,

- be set at the equivalent age related national minimum weekly allowance payable to foster carers (minus any state benefit entitlements, eligibility to the social fund, maintenance payments received for the child that would not be available to a foster carer and any other forms of income or capital arising from the placement of the child), with the exception of carers, mobility/attendance allowances and any disability related benefits);
- be paid for a period of 12 months;
- cease thereafter, unless the carer approaches the Local Authority for continued financial support, enclosing evidence to support their request;
- not include any reward or remuneration or fee element which may be available to a foster carer;
- not include any additional sum in respect of birthdays, religious festivals, holidays or school uniform, all of which are expected to be provided for from the allowance and /or family resources.

or, where the care arrangement is **at risk** of breaking down due to financial hardship, and to prevent the need for the child/young person to become looked after, will

- be subject to financial assessment using the DfE means tested model to gauge the family’s financial situation;
- be paid for a period of 12 months;

- cease thereafter, unless the carer approaches the Local Authority for continued financial support;
  - and, in any event, be subject to financial reassessment by the Local Authority designated Finance Officer.
16. The same principles apply whether a child was previously looked after by a foster carer or a family and friends carer. However, where the foster carer was approved by an Independent Fostering Provider, the allowance and fee payment may be negotiated individually as there may be significant disparity between the allowance and fee paid to a Local Authority foster carer and that which has been received from an Independent Fostering Provider.
17. The level of allowance may be adjusted to include an enhanced payment where the Local Authority considers that the child needs special care which requires a greater expenditure of resources than would otherwise be the case because of illness, disability, emotional or behavioural difficulties, the consequences of past abuse or neglect, or other exceptional circumstances. This applies where the child's condition is serious and long-term. For example, where a child needs a special diet or where items such as shoes, clothing or bedding need to be replaced at a higher rate than would normally be the case with a child of similar age who was unaffected by the particular condition.
18. In considering the applicability and amount of this adjustment, the Local Authority will have regard to any disability related benefits or other sources of funding available to the family in respect of the child. Payments in respect of a child's special needs will be subject to a full assessment of the child's need and special guardian's financial circumstances. Any payments will only be made after all other alternatives in terms of provision of specialist services, direct payments, benefits and grants have been explored. The level of the child's needs will be reviewed annually at a Resources Panel.

### Notification of the Local Authority decision

19. If the Local Authority decides not to conduct a financial assessment or pay an allowance in cases where they have the discretion to do so, the Local Authority will write to the holder of the Special Guardianship Order within 28 days, setting out the decision made and the reasons for that decision (Regulation 11(2) and 11(3)).

20. Where the decision is made to pay a Special Guardianship Order Allowance the Local Authority will write to the holder of the Special Guardianship Order setting out:

- the amount of the allowance;
- the date of the first payment;
- the method and frequency of payment and
- when the payments will cease

### Notifications by those in receipt of an allowance

21. The special guardian must comply with the conditions listed in 10(1) of the 2005 Regulations and must promptly notify the Local Authority of changes in their circumstances or those of the child. In particular, the Local Authority must be notified if:

- the child dies;
- the child ceases to live with the holder of the Special Guardianship Order;
- the Special Guardianship Order is revoked; or
- there is a change of address.

22. The notification should take place promptly and in any event within 28 days of the relevant change in circumstances.

23. An applicant for, or person in receipt of, an allowance must provide such information as is reasonably requested by the Local Authority to enable it to be satisfied that the



allowance should be paid/ continued. Failure to do so may result in non-payment or cessation of an allowance.

24. Failure to do so may result in payment being suspended or terminated and recovery of any over payments made.

#### Commencement of payment

25. The payment of a Special Guardianship Order will begin from the date of the making of the order, when granted upon the issuing of, or during the course of, care proceedings.
26. In cases whereby a Special Guardianship Order has been granted during private proceedings, a Special Guardianship Order Allowance, if payable, will begin from the date the request for a financial support was made by the child/young persons' carer.

#### Review, variation and termination

27. Eligibility for the allowance, and the proportion payable to a particular Special Guardianship Order holder, is subject to annual review and financial reassessment. The Local Authority will send the carer a written reminder of the need to provide an annual statement. Failure to do so within 28 days of the reminder being sent may result in payment being suspended or terminated. The local authority may also take steps to recover all, or part, of the financial support paid.
28. The DfE means tested model of assessment will be applied for annual re-assessment, when requested by the carer, in order to determine whether the age related SGO allowance should continue to be paid.

29. For those children previously looked after, the Special Guardianship Order Allowance will be varied as the child moves into the next age related band, from the date of the child's birthday.

30. The Special Guardianship Order Allowance will cease when any of the events in Regulation 9 occur, that is if:

- the child dies;
- the child ceases to live with the holder of the Special Guardianship Order;
- the Special Guardianship Order is revoked;
- the child ceases full time education or training and commences employment, qualifies for universal credit, income support, jobseekers allowance or employment support allowance in his own right; or
- the child becomes 18 (unless he is in full time education or training, in which case the allowance may continue until the end of the course or training he is then undertaking).

#### Overpayment

31. If an over payment has been made the Local Authority will be entitled to recover the overpayment.

#### Non-periodic financial support

##### a) Settling in grant

32. A settling in grant may be awarded where the Local Authority considers it appropriate, further to an assessment of the needs of the child joining a new family under a special guardianship order. Reference will be made to a list of basic requirements for children of different ages held by the Local Authority. The price of items needed will be based on the price of equivalent items from agreed local retailers. The grant is not paid if the child was in foster care and the foster carers have applied to be that child's special

guardians, unless there are exceptional circumstances which would justify such a grant being made.

33. A settling in grant is a one off payment, paid up to an agreed maximum per child.

34. Approval is required by a Head of Service at Decision & Review Panel.

b) Contact Expenses

35. It is recognised that there may be a need for contact to be maintained between the child and his/her birth family or other persons after the special guardianship order is made. The principle employed by the Local Authority is that the special guardian is expected to be able to manage contact themselves, or is working towards taking on responsibility within a reasonable timeframe.

36. The Local Authority **may**, however, consider payment of expenses in respect of contact based on an assessment of the child's needs, the circumstances of the individuals involved and the nature of the contact arrangements. Such support, when agreed, must be recorded within the Special Guardianship Support Plan and is also subject to annual review. If contact supervision is needed, this should be based on a risk assessment undertaken by the Local Authority.

Legal fees

a) Advice/consultation

37. Financial support will be offered in the form of 2 hours legal consultation, payable by the Local Authority at the CLS Public funding rate, unless the prospective Special Guardian has access to free legal representation. It is only paid for children known to the Local Authority prior to the application being made (i.e. Children Looked After, or designated Children in Need subject to child protection plans), where the Local Authority supports the making of the SGO, unless there are exceptional circumstances and where the Local Authority considers that the carer, or prospective carer, requires;

- legal advice about the different care arrangements that could be made for the subject child and supports the child being placed, ore remaining, in their care and;
- where the special guardian is not eligible for legal help or any other financial assistance and the Local Authority considers that their financial circumstances are such that it would not be reasonable to expect them to pay their own fees.

b) Representation in Court

Legal fees for representation of the special guardian in Court will only be paid where;

- the application relates to a child who is looked after, or who was previously looked after prior to being cared for by the prospective special guardian;
- where the Local Authority is satisfied, having regard to all the circumstances, that, but for the making of a Special Guardianship Order, the child would have become Looked After by the Local Authority;
- the Local Authority supports the application; and
- considers that the prospective guardian requires separate representation;
- the special guardian is not eligible for public funding or any other financial assistance; and
- the Local Authority considers that the special guardians financial circumstances are such that it would not be reasonable to pay their own fees.

During the currency of the Special Guardianship Order, the Local Authority will give due consideration to the payment of legal fees to defend contact or to make applications for specific orders, such as non-molestation and prohibited steps orders.

38. In any of the above scenarios, legal fees will only be paid at the CLS Public funding rate, save for exceptional circumstances. The solicitor instructed should be a member of the Law Society’s Children Panel, unless otherwise agreed by the Local Authority in advance. Itemised bills will be required. Advice and representation in respect of any proposed applications will be subject to the criteria listed above and the Local Authority’s assessment of the merits of the case.

## Delegated Authority

39. The Local Authority (Middlesbrough) is responsible for undertaking an assessment of need, and provision of any special guardian support services in response to the assessment, in relation to a special guardian living in the area of the Local Authority. The exception to this is where a child **was not** looked after *before* the special guardianship order was made.
40. A special guardian can approach the Local Authority (Middlesbrough) for financial assistance and/or support for a period of up to 3 years from the date of the making of the order and where the child **was** previously looked after prior to the making of the order.
41. The Local Authority acknowledges that it is important to ensure continuity for the child and family in the early stages of the currency of the order. Regulation 5 of the 2005 Regulations provides that the assessment and provision of services for the child, the special guardian and any children of the special guardian all remain the responsibility of the local authority **where the child was last looked after for three years from the date of the order**. This rule applies wherever the family live during this period. If the family move during the three years or there is any other significant change in their circumstances, the Local Authority may wish to undertake a reassessment and alter the support plan accordingly, including any contact arrangements that form part of the plan.
42. When the three year period from the making of Special Guardianship Order has lapsed, and when the child **was** previously looked after, the Local Authority in which the special guardian lives is responsible for assessing and providing support services.

43. In cases where the child **was not** previously looked after, the Local Authority where the special guardian lives is **always** responsible for assessment and support. This includes assessment and any support that is needed by the child's relatives who may live elsewhere. If the special guardian and their family move, then the responsibility passes to the new local authority.

44. In the event that responsibility for assessment and/ or support provision transfers to a new local authority, The Local Authority will give, and expect, co-operation from the other authority as needed to ensure a smooth transition for the child.

#### Appeal mechanism

45. If dissatisfied with a decision as to payment or amount of allowance, the holder of the SGO may appeal the decision, in writing, within 28 days of written notification of the decision. The holder of the SGO must address their appeal in writing to the Chair of the Decision & Review Panel, Safeguarding & Children's Care, Middlesbrough House, 50 Corporation Road, Middlesbrough, TS1 2RH. The letter of appeal must detail the reason(s) for the appeal and include any supporting evidence i.e. financial documents to justify the 'exceptional' or change in circumstances.