

**CORPORATE PARENTING BOARD - 18 MAY 2009**

<b>Title of paper:</b>	Residence Orders and Special Guardianship Orders in Children's Social Care	
<b>Director(s)/ Corporate Director(s):</b>	Ian Curryer, Acting Corporate Director of Children's Services	<b>Wards affected: All</b>
<b>Portfolio Holder(s):</b>	Councillor David Mellen, Portfolio Holder for Children's Services	<b>Date of consultation with Portfolio Holder(s): 26 Feb 2009</b>
<b>Contact Officer(s) and contact details:</b>	Julie Lewis – Head of Children in Care	
<b>Other officers who have provided input:</b>	Sonia Cain – Service Manager Adoption Service Tracey Nurse – Service Manager Neighbourhood Fieldwork Steve Lynk – Finance Manager Darren Yarnell – Contract Compliance and VFM Manager	
<b>Key Decision:</b>		
<b>Reasons for Key Decision:</b>		
Expenditure of £500,000 or more in a single year		X
Revenue income of £500,000 or more in a single year		X
Savings of £500,000 or more in a single year		X
Capital expenditure of £1,000,000 or more		X
Capital income of £1,000,000 or more		X
Significant effects on communities living or working in an area comprising two or more wards in the City		X
<b>Relevant Council Plan theme(s):</b>		
Choose Nottingham		X
Respect for Nottingham		X
Transforming Nottingham's Neighbourhoods		X
Supporting Nottingham People		X
Serving Nottingham Better		X
<b>Summary of issues (including benefits to customers/service users):</b>		
<p>Increased use of Special Guardianship and Residence Orders will secure permanent placements for children in care. It will contribute to a reduction of children in care numbers and the (sometimes hidden) costs associated with this status. Residence Orders and Special Guardianship Orders allow for permanency for a child and an exit from the "care" system</p> <p>This will contribute to the Council theme. Supporting Nottingham People, by improving the outcomes for children placed through Residence Orders and Special Guardianship Orders and will ensure that families are financially supported in taking on this role.</p>		
<b>Recommendation(s):</b>		
<b>1</b>	That the Board notes and comments on the report.	

## **1 BACKGROUND**

- 1.1 This report was considered by Executive Board at a meeting held on 17 March 2009, a minute extract of their decision is attached at Appendix 4
- 1.2 Recent changes in Child Care Legislation (Special Guardianship Regulations 2005) have changed the way in which children in care can be permanently placed in substitute families
- 1.3 There is much research to evidence that children displaced from their birth families experience better outcomes when placed in permanent substitute families. The legislation around Special Guardianship and Residence Orders was developed to provide permanence arrangements for children as a more flexible alternative to adoption.

There is also evidence to suggest that the courts in Nottingham City have resorted to the use of these orders in greater numbers than other authorities within the East Midlands.

- 1.4 Numbers of Special Guardianship Orders in Nottingham have risen year on year since their introduction in 2004 and there is little evidence to suggest that this trend will change in the foreseeable future. After an initial granting of 4 Special Guardianship Orders in 2004/05, the number rose to 17 in 2006/07 with a similar total expected in 2007/08.

## **2 REASONS FOR RECOMMENDATIONS (INCLUDING OUTCOMES OF CONSULTATION)**

- 2.1 The granting of a Special Guardianship or Residence Order is a decision made by the courts, usually (but not always) supported by a recommendation from social care. Regardless of whether the department has supported the application, the local authority has a duty to support carers of children subject to Special Guardianship Orders and this support may be financial. Financial support for Residence Orders is at the discretion of the local authority. The formalising of a protocol in respect of the payment of allowances for these orders will ensure there is a robust framework for decision making and the allocation of funds. The refusal to pay allowances in respect of Special Guardianship Orders could potentially be damaging to the council's reputation and result in applications for judicial review
- 2.2 The policies attached as appendices to this report detail the ways in which decisions in respect of Special Guardianship and Residence Order allowances will be undertaken.

### **Residence Orders**

Eligibility criteria for the payment of a Residence Order will normally only be paid in the following circumstances:

- I. To enable a child who is being Looked After by the Authority to be placed with a relative, foster carers or someone who is otherwise connected with the child, thus enabling the child to leave the care of the Authority
- II. When the payment of an allowance is necessary to avoid/prevent the need for a child to be Looked After by the Authority and to obtain the best available family/friend placement. This would require an assessment of the likelihood of becoming Looked After without the provision of financial assistance being provided to the carer.

Before the decision is made to consider payment of an allowance, the social worker must also ensure:

- All state benefits have been explored and applied for where appropriate
- All legal steps to obtain parental contribution have been explored

The policy details the way in which allowances will be calculated and paid and who within the department is responsible for undertaking specific actions to process applications and payments. It also details how payments may be reviewed, varied or suspended.

### **Special Guardianship Orders**

These orders differ from Residence Orders in a number of ways, but for purposes of this report, the difference to be noted is the statutory duty to provide financial support in respect of Special Guardianship Orders. Appendices contained in this report detail the legal framework in respect of Special Guardianship Orders, the process for application of such an order and the local arrangements in respect of duties and responsibilities.

## **3 OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS**

- 3.1 A number of different schemes and policies from several local authorities were considered in relation to both orders and the proposed schemes contained in this report were considered to best meet the needs of the City.
- 3.2 Currently there are no up to date policies for the payment of Residence Orders and no policy on Special Guardianship, which is a new order. These policies give the department consistency in relation to the support of families and a more acceptable means of achieving permanency for a child.

## **4 FINANCIAL IMPLICATIONS (INCLUDING VALUE FOR MONEY)**

- 4.1 Detailed information in respect of financial implications are contained in **Appendix 1** of the report.
- 4.2 With effect from 1<sup>st</sup> April 2009, it is proposed to combine the budget for Special Guardianship Orders/Residence Orders and foster carer payments into one business unit to ensure more effective management of expenditure:

<b>Current Payments</b>	<b>Spend 07/08</b>	<b>Budget 07/08</b>
Residence Orders	£651,760	£559,450
Special Guardianship Orders	£64,844	£19,190
Foster Carer Payments	<u>£2,650,000</u>	<u>£2,785,480</u>
<b>Total</b>	<b>£3,366,604</b>	<b>£3,364,120</b>

- 4.3 These proposals offer a consistent, standardised policy in both areas with rigorous checking and interrogation of other sources of income to ensure that all avenues of financial support have been thoroughly explored. These guidelines allow two methods of payment – a lump sum payment as well as regular weekly payments. Weekly payments will be the default position, lump sum payments will only be applied subject to the carers signing a legal document.

Savings can be made making a one off lump sum payment as opposed to weekly payments that last several years, provided that there are systems in place to protect the Council from the risk of making annual payments and a subsequent breakdown. There should be a legal process based on a contract signed by the carers to facilitate the recovery funds should a placement breakdown.

In addition there should be a documented process to evidence that all state benefits have been explored and applied for where appropriate and all legal steps to obtain parental contribution have been explored (see 5.1)

Children subject to such orders are no longer “children in care” attracting the additional costs such children attract i.e. social worker, independent reviewing officer time, fostering allowances etc therefore savings can be made on these costs (see 11.3). There should be a process in place to measure the impact of these proposals and capture the VFM benefits.

## **5 RISK MANAGEMENT ISSUES (INCLUDING LEGAL IMPLICATIONS, CRIME AND DISORDER ACT IMPLICATIONS AND EQUALITY AND DIVERSITY IMPLICATIONS)**

- 5.1 The granting of a Special Guardianship order or Residence Order is the decision of the court. The Special Guardianship and Residence Order Allowances are discretionary. They are means tested but once the financial assessment has been agreed for financial support, the Council has to find this or risk the possibility of legal action.
- 5.2 There is a financial risk as the increased use of these orders places significant impact on a budget which has been overspent in the previous 3 years. This could be offset by the underspend on the fostering budget. The local authority has a duty to provide support to children in such placements and this support may be financial. The use of these orders has placed a significant pressure on budgets which have not previously been resourced adequately to meet demand from such new legislation.
- 5.3 There is a risk to the welfare and development of children in need if we are not able to provide suitable placements for them. This risk can be mitigated by providing adequate funding for placements. In addition children subject to such orders are no longer “children in care” attracting the additional costs such children attract i.e. social worker, independent reviewing officer time, fostering allowances etc therefore savings can be made on these costs.

There is a risk with lump sum payments if the placement is terminated earlier than planned. This could result in additional payments being made to an alternative placement. To mitigate this risk, arrangements will be put in place to ensure that any overpayments can be recovered through legal means although it is recognised that there is the potential that the cost of taking legal action may exceed the amount of the overpayment.

## **6 LIST OF BACKGROUND PAPERS OTHER THAN PUBLISHED WORKS OR THOSE DISCLOSING CONFIDENTIAL OR EXEMPT INFORMATION**

- 6.1 Residence Order Allowances Assessment Form

## **7 PUBLISHED DOCUMENTS REFERRED TO IN COMPILING THIS REPORT**

Adoption Regulations 2002.  
Special Guardianship Regulations 2005.

## **Appendix 1**

### **DETAILED FINANCIAL IMPLICATIONS**

#### **Residence Orders**

The table below details expenditure on Residence Orders over previous financial years:

Year	2005/06	2006/07	2007/08
Budget	£543,050	£553,910	£559,450
Actual spend	£636,170	£672,925	£651,760

This highlights the recurring overspend that has occurred on this budget. However, these placements are less expensive than other options, such as fostering placements which budget has been under spent over this period and has been used to offset this overspend.

The budget for 2008/09 is £565,000. Expenditure up to the end of June indicates that there will be a similar overspend in the current financial year.

It is difficult to predict the number of requests for Residence Order allowances, however by implementing this guidance and creating a more robust assessment process, it is anticipated that this could result in a reduction in the overspend.

This guidance could also contribute to a reduction in costs since it will provide an opportunity to pay lump sums rather than an ongoing weekly payment until the child reaches 16 years of age. In paying lump sums, the overall cost is reduced since this payment will be significantly lower.

For example a 10 year old child may attract a payment of £63.00 per week. This would be paid until the child is 16. Thus the cost over a 6 year period would be £19,656. However a one off payment of £10,000 could be offered, which would equate to a saving of £9,656

Currently there are no guidelines, resulting in an inconsistent approach being taken across the fieldwork teams when determining the amount of allowance to be paid.

Further more the guidance will introduce a more stringent reviewing mechanism. This will ensure that allowances will cease if annual checks reveal that the allowance is no longer required or if carers fail to submit details as requested.

#### **Special Guardianship Orders**

The table below details expenditure on Special Guardianship Orders over previous financial years:

Year	2006/07	2007/08
Budget	£0.00	£19,190.00
Actual spend	£7,021.28	£64,844.52

The budget for 2008/09 is £79,380.

Special Guardianship Orders are made in circumstances where the outcome would possibly have been a Residence Order. Recently a number of orders have been made to foster carers with the outcome being that a child leaves the care of the local authority.

The former foster carer receives a similar payment as they would have received in fostering payments. In these circumstances there is no saving to the department per se, but one would expect a reducing demand on the Residence Order and fostering budgets and an increasing demand on the Special Guardianship budget.

When an order is made to a foster carer resulting in a child leaving care there is a saving to the department as there is no need for an allocated social worker, no reviewing arrangements to undertake and no associated costs from these activities.

**NOTTINGHAM CITY COUNCIL - RESIDENCE ORDER POLICY AND PROCEDURES**

**1.0 The Legal Framework**

- 1.1 A Residence Order is “an order which settles the arrangements to be made to the person with whom the child is to live”- Children Act 1989.

The court can make Residence Orders either upon application, or of its own volition in private law matters, or in care proceedings.

- 1.2 Once a Residence Order is made it grants the holder of the order Parental Responsibility for the child, for as long as the order is in force. It does not extinguish the parental responsibility of any person (save for a previous Residence Order holder who is not a parent). Therefore, it does not affect the legal rights, duties and responsibilities between the child and its parents.

The birth parents do not lose their parental responsibilities, but these are limited by the removal of their power to decide where the child should live and other decisions relating to the child.

- 1.3 The holder of the Residence Order cannot change the child’s name, or remove the child from the country for more than one month, without the written consent of everyone who has parental responsibility for the child.

- 1.4 The parental responsibility gained by holders who are not a parent or guardian of the child, is subject to a number of restrictions. They cannot consent to the child being placed for adoption, agree or refuse to agree to the making of an adoption order or appoint a guardian for the child.

- 1.5 For a child who is Looked After by the local authority under a Care Order, this ceases once a Residence Order is granted and hence the child would no longer be classed as a Child Looked After since the local authority no longer has parental responsibility for that child.

- 1.6 Residence Orders will expire when the child reaches 16. However, in exceptional circumstances the Residence Order can continue until the child is 18 years old. An example of exceptional circumstances would be where the child has a disability/special needs.

In addition, a Residence Order can also come to an end through discharge by order of the court, by being discharged automatically upon the making of a care order, on the making of a fresh Residence Order or if the parents live together with the child for over 6 months.

## 2.0 APPLICATION FOR A RESIDENCE ORDER

### Procedure

- 2.1 The Local Authority would normally only have an interest in a Residence Order application where it relates to a child or young person who is looked after by Nottingham City Council and where it supports an application or to prevent a child being looked after. The situations where this could apply are: -
- a) In all situations where the Local Authority is engaged in legal proceedings. The Local Authority should consider whether the child could more appropriately be placed with a relative or friend as an alternative to being placed with foster carers, pending the final hearing. At the final hearing consideration should be given to placing the child with a relative or friend under a Residence Order as an alternative to placing a child in care under a care order or for adoption under a placement order.
  - b) Where the child is being looked after, either on an interim care order or voluntarily accommodated under section 20 of the 1989 Act and the social work assessment concludes that rehabilitation back to birth parents is not viable. The care plan and subsequent review process should consider whether a Residence Order application by a relative, friend or foster carer is an option that best promotes the child's welfare.
  - c) Where there are concerns about a child's welfare the Local Authority should consider whether the application for a Residence Order by a relative or friend will avoid the child being Looked After or the need to issue care proceedings.
- 2.2 Before supporting any application for Residence Order, social workers should first discuss this with their line manager and ensure that supporting such an application is in the child's best interests.
- 2.3 When an application for a Residence Order is requested or considered for a looked after child the social worker for the child will: -
- Provide full information in writing to the prospective applicants, which will explain the effects a Residence Order will have with regard to the applicant's relationship with the child, the birth parents and the Local Authority.
  - Obtain the views of people who had parental responsibility for the child, including birth fathers who do not have parental responsibility, of the intention of the foster carer or other persons to apply for a Residence Order.
  - Ascertain the child's wishes and feelings, depending on their age, regarding the proposed application and consider the child's need for support and/or counselling.
  - Undertake an assessment of the proposed applicants to determine whether the placement will meet the child's long term needs.



- Advise applicants that they can seek independent legal advice.
- If the applicants request an allowance it must meet the criteria and the applicant should put their request in writing to the appropriate community fieldwork team manager.
- Once this is received the social worker / finance will carry out a means tested financial assessment (CH/IN/ROA/1)
- Foster carers applying for a Residence Order should be given advice and social workers MUST discuss this request with their Team Manager, supervising social worker and Team Managers Fostering.

\* (Foster carer can only apply if they have cared for the child for one year or more.)

\*(See Section 4 on Residence Order Allowances)

### **3.0 SUPPORT**

- 3.1 Residence Order applications are generally for placements deemed suitable to meet a child's long-term needs, as such it is not expected that further involvement of the Local Authority will be required or needed following the making of the Residence Order.
- 3.2 However there may be placements that do require additional support in the long-term. In such cases an assessment of need should be made.

### **4.0 RESIDENCE ORDER ALLOWANCES**

- 4.1 The decision to pay a Residence Order allowance is at the discretion of the Local Authority. An allowance can be paid upon the making of an interim Residence Order or Residence Order.
- 4.2 Residence Order Allowances can be made to relatives or friends, but are not payable to parents.
- 4.3 Agreement to pay a Residence Order allowance is not intended to remove responsibility from the birth parents to make adequate provision for the care and upbringing of their children.
- 4.4 The payment of a Residence Order allowance may affect receipt of benefits and applicants should be advised of this and to seek their own advice from the appropriate Benefit Agency.

## 5.0 ELIGIBILITY FOR A RESIDENCE ORDER ALLOWANCE.

5.1 Within this Authority such payments are normally only made in the following circumstances: -

- i) To enable a child who is being Looked After by the Authority to be placed with a relative, foster carers or someone who is otherwise connected with the child, thus enabling the child to leave the care of the Authority.
- ii) When the payment of an allowance is necessary to avoid/prevent the need for a child to be Looked After by the Authority and to obtain the best available family/friend placement. This would require an assessment of the likelihood of becoming Looked After without the provision of financial assistance being provided to the carer.

5.2 Before the decision is made to consider payment of an allowance, the social worker must also ensure: -

- All state benefits have been explored and applied for where appropriate.
- All legal steps to obtain parental contribution have been explored.

## 6.0 CALCULATION OF ALLOWANCES PAYABLE

6.1 The Residence Order allowance is means tested against the cost of raising a child taken from MasterCard/Family Circle Joint Commissioned Study (February 2006).

The current level of allowances is attached to this document in **Appendix A**.

6.2 The applicants/Social Worker will complete a Residence Order Allowance application form (CH/IN/ROA/1). This form should then be sent to Finance Section.

6.3 Finance Section will assess the level of allowances to be paid. The payment will be dependant upon the age of the child and the financial circumstances of the carers and the child. Carers may receive a proportion of the allowance payable if their financial circumstances are assessed as being such that they do not qualify for the full allowance. The allowance is age-related and will be appropriately increased at significant birthdays.

6.4 Child Benefit and where applicable Disability Living Allowance should continue to be claimed by carers. These benefits WILL NOT be deducted from the Residence Order Allowance.

6.5 In exceptional circumstance where it can be demonstrated that additional costs are incurred to meet the needs of the child, the allowance can be increased to meet these needs: - such exceptional circumstances may be as follows: -

- The applicants require financial support towards child-care/nursery costs and without this support they would be unable to continue caring for the child. The social worker would need to ensure there are no other child-care options and any financial support agreed would need to be time-limited and reviewed on a regular basis.
- The applicants require financial support towards transport costs as a result of child having ongoing and regular contact with birth parents, other family members.

6.6 Applicants must be informed that if they request an additional allowance they will be expected to provide evidence of the need for any increased allowance at application and at annual financial reviews.

## 7.0 TYPES OF PAYMENT

7.1 Payments may be of two kinds: -

- 1) Setting up payment.  
This will be a one off lump sum payment.  
(This can be paid over 1 and 2 years).
- 2) Weekly allowance.

7.2 The Social Worker would need to discuss these options with the applicants and if option one is chosen the social worker and Team Manager would need to consider what is a reasonable “setting up” payment.

7.3 If option one is chosen over the recurrent weekly allowance then this should be included in Residence Order Allowance report and signed off by the Service Manager.

7.4 In exceptional circumstances the Local Authority can consider contribution to the legal costs of a Residence Order application. In such cases the following criteria will apply: -

- The threshold for a Residence Order allowance as set out in Section 5.1 of this document must be met, and;
- The Local Authority agrees that legal representation on behalf of the applicants is necessary, and;
- It can be reasonably demonstrated that severe hardship meeting the legal costs of the Residence Order application will impact on the child, and;
- A financial assessment will be required.

***Requests for such financial assistance should be made to the appropriate Service Manager / Head of Service***

## 8.0 PROCESS FOR APPLICATION FOR A RESIDENCE ORDER ALLOWANCE

- 8.1 The social worker for the child will prepare a report setting out the background to the Residence Order application and why the local authority should support the applicants in their application for a Residence Order allowance.
- 8.2 The carer must be informed that they should apply in writing to the appropriate Team Manager requesting consideration for a Residence Order allowance. Carer provided with standard explanation of the process.
- 8.3 If the social worker/Team Manager agree the applicants meet the criteria for a Residence Order allowance the social worker **should first refer to welfare benefits** (Tel: 51355) to ensure that income is maximised and that a child benefit claim has been made.
- 8.4 Welfare Rights inform Children's Services Social Care Team of the outcome of the benefit check.
- 8.5 Following receipt of this information, if decision is taken to continue with financial assessment form CH/IN/ROA/1 to be sent to applicants for completion.
- 8.6 The completed CH/IN/ROA/1 to be forwarded to Finance Section who will carry out the financial means test assessment. This will determine the level of payment to be made, using the rates taken from "Cost of Raising a Child" (**Appendix A**).
- 8.7 Finance Section to return completed CH/IN/ROA/1 to child's social worker with recommended weekly allowance detailed.
- 8.8 Upon receipt of above social worker completes Residence Order Allowance Assessment report (**Appendix B**). This will provide information on: -
- 8.9
- How application meets eligibility criteria
  - Child's wishes and feelings
  - Assessed weekly amount to be paid
  - Evidence of need to pay additional allowance
  - Recommended payment option
  - Certification by Team Manager
  - Authorisation by Service Manager.
- 8.9 Once this has been authorised by Service Manager, copy of CH/IN/ROA/1 and Residence Order Allowance application form to be sent to Finance Section in order for payments to be set up and actioned.

The applicant to be informed of the decision in writing by the child's social worker.

Finance will ensure that the recipient's details and the agreed payment amount are updated on their spreadsheet. This spreadsheet will include client details, the amount payable, the Service Manager who agreed payment and the date that the review letter will be sent out.

- Residence Order Allowance will cease if the Residence Order is terminated or the child no longer resides with recipient of allowance.

## **9.0 ANNUAL REVIEW / VARIATION / SUSPENSION OF ALLOWANCE**

### **For Allowances Paid Weekly**

- 9.1 The allowance is reviewed annually by Finance Section. Finance will monitor the age of the young person in order to determine when that Child will enter a new age banding that will increase payment rates for that allowance.
- 9.2 After the twelve-month period has elapsed Finance Section will complete a review to ensure that circumstances have not changed. This letter will inform the recipient of the allowance that checks as to residence may be made that will include the Child's current educational provision.
- 9.3 This review will include standard letter (**Appendix C**) being sent to the recipient of the allowance to confirm that the young person is still resident at that address and, if of an appropriate age, the school that the young person is attending.
- 9.4 The recipient will be required to return confirmation within 14 days. This letter will explain that failure to return the confirmation slip may result in further action being taken.
- 9.5 If no response is received after 14 days standard letter 2 (**Appendix D**) will be sent out requesting confirmation that the young person is still in the recipients care. This communication will make it clear that failure to respond will result in a suspension of the Residence Order allowance.

## **10. CLOSURE / SUSPENSION**

- 10.1 All Residence Order allowances will cease to be payable at the sixteenth birthday of the young person, unless exceptional circumstances exist and in such cases payments can continue until the child reaches eighteen.
- 10.2 All Residence Order allowances will be suspended if after 21 days from the date, the second review letter has been sent, no response has been received.

- 10.3 Residence Order allowances will be closed on all cases where the Residence Order holder informs the department that they are no longer accommodating the young person. Where this notification occurs payments will immediately cease.
- 10.4 Suspended cases will be held in stasis for a period of three months with no payments being made. Where no correspondence is received during this additional three-month period from the Residence Order holder, the payment will be permanently closed. All further correspondence after this date will be treated as a new application.
- 10.5 Where allowances are suspended and the Residence Order holder contacts the department within the three-month threshold period, payments may only be reactivated through Service Manager authorisation or above. In such cases this written authorisation will be sent to the Finance Section who will reactivate payments from the date agreed by the Service Manager.
- 11.0 RESIDENCE ORDER, SPECIAL GUARDIANSHIP ORDER, ADOPTION ORDER – THE DIFFERENCES IN THESE ORDERS**
- 11.1 A Special Guardianship order gives the Special Guardian more responsibility than they would have if the child was subject to a Residence Order but less responsibility than an adoption order.

### **Residence Order**

- 11.2 The holder of a Residence Order exercises parental responsibility jointly with other people who have parental responsibility (for example the birth parents). In a Residence Order, parental responsibility is extended to the holder of the order. On the making of a Residence Order a care order comes to an end and therefore the child ceases to be looked after.
- 11.3 In a Residence Order the child's birth parents retain parental responsibility and they also retain the right to consent or not to adoption. The child's birth parents can also apply through the courts for contact with the child or a variation of the Residence Order.
- 11.4 Residence Orders usually expire when the child reaches 16. However, in exceptional circumstances the Residence Order can continue until the child is 18 years old. The family may have regular and frequent contact with their child.
- 11.5 A Residence Order specifies where the child should live.
- 11.6 Financial Support is discretionary.

## **Special Guardianship Order**

- 11.7 The Special Guardian will have clear responsibility for the day to day decisions about caring for the child or young person and his or her upbringing. In all cases where a Special Guardianship Order is made, the applicant acquires parental responsibility. Any child previously looked after will cease to be looked after on the making of this order. A Special Guardian may exercise parental responsibility to the exclusion of all others with parental responsibility apart from another Special Guardian. A Special Guardian can also appoint a guardian in the event of their death.

Special Guardians cannot change the child's surname or move to live abroad for more than 3 months without the agreement of all others with parental responsibility or leave of the court. Special Guardians cannot consent to the adoption of the child.

- 11.8 Under a Special Guardianship order the child's birth parents retain parental responsibility. Their exercise of this will be very limited because the Special Guardian will also have parental responsibility which they can exercise to the exclusion of the parental responsibility held by the birth parents. The Special Guardians would have to seek the agreement of the parents if they wished to change the child's surname or live abroad for more than 3 months but they also have the option of applying to the court for permission if the parents do not consent. The parents also retain the right to consent or not to adoption and may apply through the courts for contact with the child or for a variation of the Special Guardianship order.
- 11.9 Special Guardianship orders last until the child is 18. The child's needs at the time of the making of the order and in the future must be considered. For a child who is subject to a Special Guardianship order it is likely that there will be more face to face contact than where a child has been adopted. The child's parents are able to apply for a contact order under Section 8 of the Children Act 1989.
- 11.10 There is no requirement that the child must live with the Special Guardians.
- 11.11 Special Guardianship support services must be in place.

## **Adoption**

- 11.12 Where an adoption order is made, parental responsibility is given exclusively to the adopters and the adopters become responsible for maintaining the child.
- 11.13 Under an adoption order the child's birth parents lose all parental responsibility. The adoptive parents are treated in law as if the child had been born to them.
- 11.14 Adoption orders last for life except in very exceptional circumstances.

11.15 The court must consider arrangements for contact before making an adoption order. The court has power to make a contact order under Section 8 of the Children Act 1989 but it is unusual for this to happen against the adopters wishes. More often arrangements for contact, whether direct or indirect, are made with the help of the agency before the adoption order is made.

11.16 Adoption Support Services must be in place.

## Appendix A - Cost of raising a child

### Residence Order Allowances

- Procedure that will create consistency for new recipients of Residence Order allowances.
- This procedure will link the costs of looking after a child to the allowances paid.
- Research has identified the weekly cost of raising a child. These are:

<b>Age</b>	<b>0-1</b>	<b>2-10</b>	<b>11 - 15</b>	<b>16+</b>
<b>Feeding / Clothing / Entertaining</b>	<b>40</b>	<b>59</b>	<b>63</b>	<b>65</b>
<b>Heating Bedroom</b>	<b>4</b>	<b>4</b>	<b>4</b>	<b>4</b>
<b>Total cost</b>	<b>£44</b>	<b>£63</b>	<b>£67</b>	<b>£69</b>

As at February 2006 – source Mastercard / Family Circle Joint commissioned study



**Residence Order Allowance Assessment Form**

**Child's details**

Child's Name: \_\_\_\_\_ Date of Birth; \_\_\_\_\_

Child's Name: \_\_\_\_\_ Date of Birth; \_\_\_\_\_

Child's Name: \_\_\_\_\_ Date of Birth; \_\_\_\_\_

Child's Name: \_\_\_\_\_ Date of Birth; \_\_\_\_\_

Child's Name: \_\_\_\_\_ Date of Birth; \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

**Ethnic Origin:**

A White	B Mixed	C Asian	D Black	E <u>Other Racial Group</u>
<input type="checkbox"/> British	<input type="checkbox"/> White & Black Carib.	<input type="checkbox"/> Indian	<input type="checkbox"/> Black Caribbean	<input type="checkbox"/> Chinese
<input type="checkbox"/> Irish	<input type="checkbox"/> White & Black African	<input type="checkbox"/> Pakistani	<input type="checkbox"/> Black African	<input type="checkbox"/> Other Racial Group
<input type="checkbox"/> Other White	<input type="checkbox"/> White & Asian	<input type="checkbox"/> Bangladeshi	<input type="checkbox"/> Other Black	
	<input type="checkbox"/> Other Mixed	<input type="checkbox"/> Other Asian		

**Legal States:** \_\_\_\_\_

**Applicant's Details:**

(Tick one box)

Name: \_\_\_\_\_ Age: 18-20  21-25  26-30  31 or over

**Ethnic Origin:**

A White	B Mixed	C Asian	D Black	E <u>Other Racial Group</u>
<input type="checkbox"/> British	<input type="checkbox"/> White& Black Carib.	<input type="checkbox"/> Indian	<input type="checkbox"/> Black Caribbean	<input type="checkbox"/> Chinese
<input type="checkbox"/> Irish	<input type="checkbox"/> White&Black African	<input type="checkbox"/> Pakistani	<input type="checkbox"/> Black African	<input type="checkbox"/> Other Racial Group
<input type="checkbox"/> Other White	<input type="checkbox"/> White & Asian	<input type="checkbox"/> Bangladeshi	<input type="checkbox"/> Other Black	
	<input type="checkbox"/> Other Mixed	<input type="checkbox"/> Other Asian		

Address: \_\_\_\_\_

\_\_\_\_\_

**Family Composition:**

**How criteria for Residence Order Allowance is met:**

**Child's views, wishes and feelings:**

**Residence Order Allowance Assessment Form**

**Financial Information**

- Has contact been made with Welfare Rights to ensure all benefits are being claimed?

Yes  No

**Provide Information on outcome:**

- Have birth parents been contacted re: Parental contribution to the upbringing of their child?

Yes  No

**Provide Information on outcome:**

- Recommended weekly allowance  
(as detailed on CH/IN/ROA/1)

£

- Is an additional payment recommended

Yes  No

**Provide evidence of need of additional payment.**

- This should include: -
- Reason for request
  - Length of time this payment will be required
  - What other options have been explored

<b>Weekly standard amount</b>	+	<b>Weekly additional</b>	=	<b>Total Weekly amount</b>
£ <input style="width: 90%;" type="text"/>		£ <input style="width: 90%;" type="text"/>		£ <input style="width: 90%;" type="text"/>

**How should this be paid?**

Tick

1. One off lump sum/setting up payment
2. Ongoing weekly payment

**TO FINANCE SECTION (Delete as appropriate)**

1. Pay a "setting up" amount of   
To be paid over  Years
2. Pay a weekly amount of

**Signed:**      **Social Worker** \_\_\_\_\_

**Authorisation:** **Team Manager** \_\_\_\_\_

**Certified:**      **Service Manager** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Appendix C – Draft letter 1**



My Ref:

Your Ref:

Contact:

Direct Line:

**Children's  
Services**

Performance & Policy Service  
The Sandfield Centre  
Sandfield Road  
Lenton  
Nottingham

Dear

**Residence Order Allowance paid in respect of  
(Name and Date of Birth of Child)**

Nottingham City Children's services review the Residence Order Allowance payments to carers on an annual basis.

According to our records the above named child(ren) has been living with you for over twelve months and you continue to be in receipt of a Residence Order Allowance.

This allowance will cease when either the child leaves your care or turns 16.

Please can you confirm, using the slip below, that (insert child(rens) name) is still in your care and that the Residence Order allowance is still required.

Failure to return the slip provided within 14 days may result, in certain circumstances, in your allowance being suspended.

Yours sincerely,

**Appendix D – Draft letter 2**



My Ref:

Your Ref:

Contact:

Direct Line:

**Children's  
Services**

Performance & Policy Service  
The Sandfield Centre  
Sandfield Road  
Lenton  
Nottingham

Dear

**Residence Order Allowance paid in respect of  
(Name and Date of Birth of Child)**

Nottingham City Children's recently sent you a Residence Order Allowance Review letter

This letter explained that, according to our records the above named child(ren) had been living with you for over twelve months and that you were continuing to be in receipt of a Residence Order Allowance.

Children's services have not yet received your completed form.

In order for your allowance to remain please can you confirm, using the slip below, that (insert child(rens) name) is still in your care and that the Residence Order allowance is still required.

**If Children's services do not receive your completed slip within 14 days your allowance will cease.**

Yours sincerely,

## **NOTTINGHAM CITY COUNCIL - SPECIAL GUARDIANSHIP POLICY AND PROCEDURES**

- 1.1. Special Guardianship is a new legal status and an entirely new order, introduced by the Adoption and Children Act 2002. A Special Guardianship order fits broadly between a Residence Order and an adoption order in terms of the carer taking responsibility for the child. Special Guardianship offers permanency for the child.
- 1.2. Special Guardianship offers greater security than long-term fostering as it runs to 18, but does not require the legal severance from the birth family that is the result of an adoption order.
- 1.3. A Special Guardianship order gives the Special Guardian parental responsibility for the child. The birth parents remain the child's legal parents and retain parental responsibility though their ability to exercise this is very limited. Special Guardians have clear responsibility for all the day to day decisions about caring for the child or young person, for example their education. A Special Guardian may exercise parental responsibility to the exclusion of others with parental responsibility such as the birth parents, without needing to consult them in all but a few circumstances.

### **2.0 The Legal framework for Special Guardianship**

2.1 The Adoption & Children Act 2002 provides the legal framework for Special Guardianship. Section 115 (1) of the 2002 Act inserts new sections 14 A – F into the Children Act 1989. The new sections provide for:

- Who may apply for a Special Guardianship Order
- The circumstances in which a Special Guardianship Order may be made
- The nature and effect of Special Guardianship orders
- Support services for those affected by Special Guardianship

2.2 A Special Guardianship Order is an order appointing a person or persons to be a child's Special Guardian. Applications to become Special Guardians may be made by an individual or jointly by two or more people. Joint applicants do not need to be married. Special Guardians must be aged 18 or over. The parents of a child may not become that child's Special Guardian. A court may make a Special Guardianship order in respect of a child on the application of:

- Any guardian of the child
- A local authority foster carer with whom the child has lived for at least one year immediately preceding the application
- Anyone who holds a Residence Order with respect to the child, or who has the consent of all those in whose favour a Residence Order is in force

- Anyone with whom the child has lived for three out of the last five years
  - Where the child is in the care of a local authority, any person who has the consent of the local authority
  - Anyone who has the consent of all those with parental responsibility for the child
  - Any person, including the child, who has the leave of the court to apply
- 2.3 The court may also make a Special Guardianship order in any family proceedings concerning the welfare of a child if it considers that an order should be made. This applies even where no application has been made and includes adoption proceedings. When considering whether to make a Special Guardianship order, the welfare of the child is the court's paramount consideration and the welfare checklist in section 1 of the Children Act 1989 applies.
- 2.4 Any person who wishes to apply for a Special Guardianship order must give three months' written notice to the local authority of their intention to apply. The only exception to this is where a person has the leave of the court to make a competing application for a Special Guardianship order where an application for an adoption order has already been made. This is in order to prevent the competing application delaying the adoption order hearing.
- 2.5 On receipt of notice of an application, or if the court makes a request, the local authority must investigate and prepare a report to the court about the suitability of the applicants to be Special Guardians. The information to be included in the report to the court is set out in regulation 21 of the Special Guardianship Regulation 2005, and the schedule there to (see appendix 5). The local authority may arrange for someone else to carry out the investigation or prepare the report on their behalf. The court may not make a Special Guardianship order unless it has received the report covering the suitability of the applicants. The court still needs a report in relation to Special Guardianship when in other proceedings where Special Guardianship is being considered.
- However, if reports have already been filed in the other proceedings it is possible to file a shorter Special Guardianship report dealing with any matters set out in the schedule, which have not already been covered.
- 2.6 Before making a Special Guardianship order, the court must consider whether to vary or discharge any other existing order made under Section 8 of the Children Act 1989. This could include a contact order or a Residence Order. The court should also consider whether a contact order should be made at the same time as the Special Guardianship order. A contact order may be made, for example, to require continued contact with the child's birth parents.
- 2.7 At the same time as making a Special Guardianship order, the court may also give leave for the child to be known by a new surname and give permission for the child to be taken out of the UK for periods longer than three months.



- 2.8 The Special Guardian will have parental responsibility for the child. Subject to any later order, the Special Guardian may exercise parental responsibility to the exclusion of all others with parental responsibility, apart from another Special Guardian. An exception applies in circumstances where the law provides that the consent of more than one person with parental responsibility is required (for example, the sterilisation of a child). The intention is that the Special Guardian will have clear responsibility for all the day to day decisions about caring for the child or young person and his upbringing. Unlike adoption the order preserves the child's basic legal link with its birth parents. They remain legally the child's parents, though their ability to exercise their parental responsibility is limited. They 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.
- 2.9 While a Special Guardianship order is in force, the written consent of every person who has parental responsibility for the child or the leave of the court must be given:
- to cause the child to be known by a different surname
  - to remove the child from the United Kingdom for longer than three months
- 2.10 Unlike adoption orders, Special Guardianship orders can be varied or discharged on the application of:
- the Special Guardian
  - the local authority in whose name a care order was in force with respect to the child before the Special Guardianship order was made
  - anyone with a Residence Order in respect of the child before the Special Guardianship order was made
  - with the leave of the court:
  - the child's parents or guardians
  - any step-parent who has parental responsibility
  - anyone who had parental responsibility immediately before the Special Guardianship order was made
  - the child (if the court is satisfied that the child has sufficient understanding)
- 2.11 Local authorities are required to make arrangements for the provision of Special Guardianship support services. These include counselling, advice, information and such other services (including financial support) as are prescribed in the Regulations. The Regulations also provide for the assessment of needs for Special Guardianship support services, and the planning and the reviewing of those support services. Consequently, it is important that at the earliest possible stage, discussions re support take place between the field social worker, the post adoption team and legal services. The social worker will need to prepare a Special Guardianship Support Plan which will be presented at court.
- 2.12 Children who were looked after by a local authority immediately before the making of a Special Guardianship order may qualify for advice and assistance under the Children Act 1989, as amended by the Children (Leaving Care) Act 2000 and the Adoption and Children Act 2002. In the context of Special Guardianship, to qualify for advice and assistance, section 24(1A) of the Children Act 1989 provides that the child must:

- have reached the age of 16, but not the age of 21
- if less than eighteen years old, have a Special Guardianship order in force
- if eighteen years old or above, have had a Special Guardianship order in force when they reached that age, and
- have been looked after by a local authority immediately before the making of the Special Guardianship order

### **3.0 Residence Order, Special Guardianship Order, Adoption Order – the differences in these orders**

3.1 A Special Guardianship order gives the Special Guardian more responsibility than they would have if the child was subject to a Residence Order but less responsibility than an adoption order.

#### **Residence Order**

3.2 The holder of a Residence Order exercises parental responsibility jointly with other people who have parental responsibility (for example the birth parents). In a Residence Order, parental responsibility is extended to the holder of the order. On the making of a Residence Order a care order comes to an end and therefore the child ceases to be looked after.

3.3 In a Residence Order the child's birth parents retain parental responsibility and they also retain the right to consent or not to adoption. The child's birth parents can also apply through the courts for contact with the child or a variation of the Residence Order.

3.4 Residence Orders usually expire when the child reaches 16. However, in exceptional circumstances the Residence Order can continue until the child is 18 years old. The family may have regular and frequent contact with their child.

3.5 A Residence Order specifies where the child should live.

3.6 Financial Support is discretionary.

#### **Special Guardianship Order**

3.7 The Special Guardian will have clear responsibility for the day to day decisions about caring for the child or young person and his or her upbringing. In all cases where a Special Guardianship Order is made, the applicant acquires parental responsibility. Any child previously looked after will cease to be looked after on the making of this order. A Special Guardian may exercise PR to the exclusion of all others with parental responsibility apart from another Special Guardian. A Special Guardian can also appoint a guardian in the event of their death.

Special Guardians cannot change the child's surname or move to live abroad for more than 3 months without the agreement of all others with parental responsibility or leave of the court. Special Guardians cannot consent to the adoption of the child.

- 3.8 Under a Special Guardianship order the child's birth parents retain parental responsibility. Their exercise of this will be very limited because the Special Guardian will also have parental responsibility which they can exercise to the exclusion of the parental responsibility held by the birth parents. The Special Guardians would have to seek the agreement of the parents if they wished to change the child's surname or live abroad for more than 3 months but they also have the option of applying to the court for permission if the parents do not consent. The parents also retain the right to consent or not to adoption and may apply through the courts for contact with the child or for a variation of the Special Guardianship order.
- 3.9 Special Guardianship orders last until the child is 18. The child's needs at the time of the making of the order and in the future must be considered. For a child who is subject to a Special Guardianship order it is likely that there will be more face to face contact than where a child has been adopted. The child's parents are able to apply for a contact order under Section 8 of the Children Act 1989.
- 3.10 There is no requirement that the child must live with the Special Guardians.
- 3.11 Special Guardianship support services must be in place.

### **Adoption**

- 3.12 Where an adoption order is made, parental responsibility is given exclusively to the adopters and the adopters become responsible for maintaining the child.
- 3.13 Under an adoption order the child's birth parents lose all parental responsibility. The adoptive parents are treated in law as if the child had been born to them.
- 3.14 Adoption orders last for life except in very exceptional circumstances.
- 3.15 The court must consider arrangements for contact before making an adoption order. The court has power to make a contact order under Section 8 of the Children Act 1989 but it is unusual for this to happen against the adopters wishes. More often arrangements for contact, whether direct or indirect, are made with the help of the agency before the adoption order is made.
- 3.16 Adoption Support Services must be in place.

### **4.0 Criteria for consideration of Special Guardianship order**

- 4.1 Pre-school child cared for by relative/friend where the alternative would be adoption outside of the family.
- 4.2 A child of any age whose parents cannot effectively exercise parental responsibility due to learning disability, long term history of substance abuse, mental illness, domestic violence or they live permanently abroad.
- 4.3 Foster carers wishing to achieve permanency for a child(ren) in placement and the Children's Services Department is in agreement with this as a plan for the child.

- 4.4 Where there are cultural or religious objections to adoption.
- 4.5 An older child who is wishing to retain legal links with birth parents and does not wish to be adopted but would like security.
- 4.6 A child whose parents are abroad who wishes to retain legal links with them, but the day to day parental responsibility is with a Special Guardian e.g. an unaccompanied child seeking asylum.

## **5.0 Contact with Birth Parents/Family**

### **5.1 Special Guardianship**

For a child who is subject to a Special Guardianship order it is likely that there will be more face to face contact than where a child has been adopted. The child's parents are able, if they wish to apply for a contact order from the court under Section 8 of the Children Act 1989, or for a variation of the Special Guardianship Order.

### **5.2 Residence Order**

A contact order made under Section 8 of the Children Act 1989 can be made, and the family may well have regular and frequent contact with the child, irrespective of whether there is a contact order from the Family Proceedings Court.

### **5.3 Adoption Order**

The court must consider arrangements for contact before making an adoption order. The court has power to make a contact order under Section 8 Children Act 1989, but it is unusual for this to happen against the adopters' wishes. More often arrangements for contact, whether direct or indirect, are made with the help of the agency before the adoption order is made.

### **5.4 Post Special Guardianship Order Contact**

Any proposals regarding contact arrangements should be discussed initially with the Team Manager of the Post Adoption Team prior to the social worker writing their report. The Post Adoption Team will offer post order support services to the Special Guardian and needs to be consulted as early as possible regarding any proposed contact arrangements.

## **6.0 Statutory Requirements Governing Applications**

### **6.1 Eligibility**

Before the local authority takes any steps to support an application for Special Guardianship, they must first ensure that the person(s) wishing to become Special Guardian(s) are eligible. A court may make a Special Guardianship Order in respect of a child on the application of the following persons:

- Any guardian of the child,
- A local authority foster carer with whom the child has lived for one year immediately preceding the application,
- Anyone who holds a Residence Order with respect to the child, or who has the consent of all those in whose favour a Residence Order is in force,
- Anyone with whom the child has lived for three out of the last five years,
- Where the child is in the care of a local authority, any person who has the consent of the local authority,
- Anyone who has the consent of all those with parental responsibility for the child
- Any person, including the child, who has the leave of the court to apply.

## 6.2 Provisions Relating to Family Proceedings

It is important to note that the court may make a Special Guardianship Order in any family proceedings concerning the welfare of the child if they consider an order should be made. This applies even when no application has been made and includes adoption proceedings. In all circumstances the local authority will need to provide a report for the court. The court and local authority must consider the whole range of options available.

## 6.3 Timescale

An applicant must give three months notice to the local authority of their intention to apply for a Special Guardianship Order.

The only exception to the three month notice period is where someone has already applied for an adoption order. The court may then give leave for someone else to apply for an order for Special Guardianship, although this will only occur in very exceptional circumstances. In these cases the 3 month notice period is disregarded to stop the competing Special Guardianship Order delaying the adoption order. The court will then consider both at the same time and decide which is the best option for the child.

## 6.4 Reports to the Court

In that 3 month period the local authority must complete a report in accordance with the schedule or arrange for someone else to do this on its behalf. The schedule to the Special Guardianship Regulations details what the report should cover. Before making the Special Guardianship Order, the court must consider whether to vary or discharge any other existing order made under Section 8 of the Children Act 1989. A Section 8 contact order can be made at the same time as a Special Guardianship Order.

For both looked after and other children there must be a report for the court by the local authority. A copy of the relevant schedule from the Special Guardianship Regulations 2005 is attached to this policy, **see Appendix A**. The report covers all the necessary information about the child, the child's family, the wishes and feelings of the child, the prospective Special Guardian, information about the local authority

that completed the report and recommendations about whether an order should be made and contact arrangements.

In order to ensure that the service complies with the standards of good practice set out in the statutory guidance, the social worker who prepares the report to the court should be suitably qualified and experienced. However, where this cannot be achieved, social workers who do not have suitable experience will be supervised by someone who has.

## 6.5 Variation of Special Guardianship Orders

Where the applicant is not the child and the leave of the court is required, the court may only grant leave if there has been a significant change in circumstances since the order was made. In the case of a child applying, the court may only grant leave if it is satisfied that the child has sufficient understanding to make the proposed application. The court in any family proceedings can vary or discharge the order.

## 7.0 Local Guidance and Procedure

### 7.1 Recommending a Special Guardianship Order: the Child's Interest

Decisions regarding the recommendation for Special Guardianship must be viewed in the light of the welfare checklist at Section One of the Children Act 1989, so when determining any question with respect to the upbringing of a child under the provisions of Special Guardianship, the child's welfare shall be the paramount consideration. It is expected that the option of Special Guardianship will be discussed at all statutory child care reviews with the same thoroughness as all permanency planning for children.

In determining whether a Special Guardianship Order is in the child's interest, the following issues must always be considered:

- The views and wishes of the child, whether they fully understand the nature of a Special Guardianship order and why this may be the preferred permanency option for them.
- The views and wishes of the carers and their suitability, including whether they fully understand their roles as Special Guardians. As the child will cease to be looked after as a result of the order being made how they view taking responsibility for making decisions about the child's upbringing without the involvement of the local authority.
- The suitability of plans for future contact between the child and their birth parents and others who are important to the child. It should be noted that in reporting to the court the local authority is required to recommend appropriate contact arrangements in all cases.

Any decision about recommending Special Guardianship must be discussed fully with the Team Manager supervising the social worker who reports to the court and their service manager.

## 7.2 Children who are not Looked After

Where the child is not looked after, the local authority has the same responsibility for reporting to the court and carefully assessing the recommendations. As for a looked after child, every effort will be made to consider fully with the prospective applicants and the child the reasons for making an application, whether it is advisable to do so, and what the other options might be. 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 what other options the court may wish to consider.

The allocation of the case will need to take into account the circumstances of the case, whether there is a social worker already involved, and the expectation of the statutory guidance that the social worker should be suitably qualified and experienced. Where this cannot be achieved, social workers who do not have suitable experience will be supervised by someone who has.

If there is no social worker already involved with the family then this report will be undertaken by a social worker in the Adoption Assessment and Support Team.

## 8.0 Legal Requirements for Providing Support Services

### 8.1 General

Where it is intended that a looked after child will become subject to a Special Guardianship Order, those who must receive an assessment for Special Guardianship support services at their request include:

- The child
- The Special Guardian or prospective Special Guardian
- The child's parent

### 8.2 Comparisons with Adoption and Residence Orders

The main differences between Special Guardianship, Residence and Adoption Orders are as follows:

### 8.3 Residence Order

It is possible for someone holding a Residence Order to receive support services, through the general framework of support for children in need, or through a Residence Order allowance which can be made at the discretion of a local authority.

### 8.4 Adoption order

Local authorities are required to make arrangements for the provision of adoption support services. All those affected by an adoption order are eligible for adoption support services.

## 8.5 Purpose

The purpose of Special Guardianship support services is to ensure the continuance of the relationship between the child and his Special Guardian or the prospective Special Guardian.

The child's parents are likely to remain involved where a Special Guardianship Order has been made, so it will be important to assess the likely impact of the Special Guardianship Order on the relationship between the parent, the child and the Special Guardian. This may well be more of an issue in the case of Special Guardianship than in adoption cases, because it is more likely that the child will have a continuing relationship with their parent(s).

It is important to emphasise that Special Guardianship support services should not be seen in isolation from mainstream services.

## 8.6 Assessment and Planning

The policy and procedure for the assessment, planning, provision and review of Special Guardianship support services is almost identical to the policy for adoption support services, with the exception of additional leaving care provision. The Regulations also provide for the planning and review of support services.

## 8.7 Leaving Care Support

A child who was looked after immediately before the making of a Special Guardianship Order, and who was then between the ages of 16-21, is eligible for leaving care support. Other children who are under the age of 16 at the time the order is made are not eligible. This needs to be taken into account when an application for Special Guardianship is being considered.

## 8.8 Financial support

The regulations state that financial support should be provided where this is necessary to ensure that the arrangements for a Special Guardianship Order can be secured. Financial support should not be the sole reason for a Special Guardianship arrangement failing to survive. This applies to both looked and non-looked after children.

Eligibility for the payment of regular allowances will be based upon a means test and assessed in accordance with the regulations and guidance. Contact to be made within the Children's Services Department's Finance section who will undertake the Special Guardianship Financial Assessment. The provision of an allowance agreed before the Special Guardianship Order remains the responsibility of the authority who originally agreed it, regardless of where the family live. The requirement for carers to complete and supply the local authority with an annual statement as to their financial circumstances, the financial needs and resources of the child, their address and whether the child still has a home with him will apply in all cases.



In exceptional cases payments may be made where the child needs special care as a result of long term and serious illness, disability, or severe emotional and behavioural difficulties. It must be demonstrated that the actual costs of providing the special care are above those applicable to a child who does not suffer from the condition. Examples are the need for special diets, clothing or bedding. Eligibility for such payments must be assessed in relation to any entitlement to benefits, such as Disabled Living Allowance. Any payment agreed may be paid as an enhancement to a regular allowance.

Assistance may also be provided with legal costs, both at the time of the application and subsequently, particularly if the application is contested. Assistance may be given where this is deemed necessary for the order to be made or to continue, where the application or the continuation of the order is assessed by the local authority as being in the child's best interest. Cases will be assessed individually and agreement for payment must be supported by the relevant fieldwork Service Manager.

Assistance may also be provided with travelling expenses to facilitate contact between the child and their relatives or others with whom the child is considered by the local authority to have a beneficial relationship. Cases will be assessed individually and agreement for payment must be supported by the relevant fieldwork Service Manager.

## 8.9 Looked After Children

For looked after children, as for adoption support services, the local authority who last looked after them retains responsibility for the assessment and provision of Special Guardianship support services for three years from the date of the making of the order. It also retains responsibility indefinitely for regular financial support agreed before the making of the Special Guardianship Order. In all other situations, including where the initial three year period has expired, responsibility for assessing and providing support services is with the local authority where the Special Guardian lives.

As with adoption support services, a foster carer who becomes the Special Guardian for a child they were formerly fostering can receive an element of remuneration for up to two years after making the order, and for a longer period in exceptional circumstances. Financial issues should not be the sole reason for a Special Guardianship arrangement failing to survive. This may enable the authority to maintain payments to foster carers who become Special Guardians at the same rate as they received when they were fostering the child. Where it is proposed that remuneration will continue agreement for payment must be supported by the fieldwork Service Manager and the Fostering Service Manager.

## 9.0 Variation and Discharge

9.1 Special Guardianship Orders can be varied or discharged on the application of the following persons, who do not require the leave of the court to make application:

- the Special Guardian,
- the local authority in whose name a care order was in force with respect to the child before the Special Guardianship order was made,
- anyone with a Residence Order in respect of the child before the Special Guardianship order was made.

9.2 The following persons do require the leave of the court to make application for the variation of a Special Guardianship Order

- the child's parents or guardians,
- any step-parent who has parental responsibility,
- anyone who had parental responsibility immediately before the Special Guardianship order was made,
- the child (if the court is satisfied that the child has sufficient understanding).

NB. Where the applicant is not the child and the leave of the court is required, the court may only grant leave if there has been a significant change in circumstances since the Special Guardianship order was made. The court may, during any family proceedings in which a question arises about the welfare of a child who is subject to a Special Guardianship order, vary or discharge the order in the absence of an application.

## **Appendix A - Schedule to the Special Guardianship Regulations 2005**

Regulation 21: Matters to be dealt with in the report for the court

The following matters are prescribed for the purposes of section 14A(8)(b) of the Act.

### 1. In respect of the child –

- (a) name, sex, date and place of birth and address including local authority area;
- (b) a photograph and physical description;
- (c) nationality (and immigration status where appropriate);
- (d) racial origin and cultural and linguistic background;
- (e) religious persuasion (including details of baptism, confirmation or equivalent ceremonies);
- (f) details of any siblings including their dates of birth;
- (g) the extent of the child's contact with his relatives and any other person the local authority consider relevant;
- (h) whether the child is or has been looked after by a local authority or is or has been provided with accommodation by a voluntary organisation and details (including dates) of placements by the authority or organisation;
- (i) whether the prospective Special Guardian is a local authority foster parent of the child;
- (j) a description of the child's personality, his social development and his emotional and behavioural development and any related needs;
- (k) details of the child's interests, likes and dislikes;
- (l) a health history and a description of the state of the child's health which shall include any treatment the child is receiving;
- (m) names, addresses and types of nurseries or schools attended with dates;
- (n) the child's educational attainments;
- (o) whether the child is subject to a statement of special educational needs under the Education Act 1996<sup>[5]</sup>; and
- (p) details of any order made by a court with respect to the child under the Act including
  - (i) the name of the court;
  - (ii) the order made; and
  - (iii) the date on which the order was made.

## 2. In respect of the child's family –

- (a) name, date and place of birth and address (and the date on which their last address was confirmed) including local authority area of each parent of the child and his siblings under the age of 18;
- (b) a photograph, if available, and physical description of each parent;
- (c) nationality (and immigration status where appropriate) of each parent;
- (d) racial origin and cultural and linguistic background of each parent;
- (e) whether the child's parents were married to each other at the time of the child's birth or have subsequently married and whether they are divorced or separated;
- (f) where the child's parents have been previously married or formed a civil partnership, the date of the marriage or civil partnership;
- (g) where the child's parents are not married, whether the father has parental responsibility and, if so, how it was acquired;
- (h) if the identity or whereabouts of the father are not known, the information about him that has been ascertained and from whom, and the steps that have been taken to establish paternity;
- (i) the past and present relationship of the child's parents;
- (j) where available, the following information in respect of each parent
  - (i) health history, including details of any serious physical or mental illness, any hereditary disease or disorder or disability;
  - (ii) religious persuasion;
  - (iii) educational history;
  - (iv) employment history;
  - (v) personality and interests;
- (k) in respect of the child's siblings under the age of 18
  - (i) the person with whom the sibling is living;
  - (ii) whether the sibling is looked after by a local authority or provided with accommodation by a voluntary organisation; and
- (iii) details of any court order made with respect to the sibling under the Act, including the name of the court, the order made and the date on which the order was made.

## 3. In respect of the wishes and feelings of the child and others –

- (a) an assessment of the child's wishes and feelings (considered in light of his age and understanding) regarding:
  - (i) Special Guardianship;
  - (ii) his religious and cultural upbringing; and
  - (iii) contact with his relatives and any other person the local authority consider relevant,
  - (iv) and the date on which the child's wishes and feelings were last ascertained.
- (b) the wishes and feelings of each parent regarding:
  - (i) Special Guardianship;
  - (ii) the child's religious and cultural upbringing; and
  - (iii) contact with the child,
  - (iv) and the date on which the wishes and feelings of each parent were last ascertained; and
- (c) the wishes and feelings of any of the child's relatives, or any other person the local authority consider relevant regarding the child and the

dates on which those wishes and feelings were last ascertained.

4. In respect of the prospective Special Guardian or, where two or more persons are jointly prospective Special Guardians, each of them –

- (a) name, date and place of birth and address including local authority area;
- (b) a photograph and physical description;
- (c) nationality (and immigration status where appropriate);
- (d) racial origin and cultural and linguistic background;
- (e) if the prospective Special Guardian is:

- (i) married, the date and place of marriage;
- (ii) has formed a civil partnership, the date and place of registration of the civil partnership; or
- (iii) has a partner, details of that relationship;

- (f) details of any previous marriage, civil partnership, or relationship;
- (g) where the prospective Special Guardians wish to apply jointly, the nature of their relationship and an assessment of the stability of that relationship;
- (h) if the prospective Special Guardian is a member of a couple and is applying alone for a Special Guardianship order, the reasons for this;
- (i) whether the prospective Special Guardian is a relative of the child;
- (j) prospective Special Guardian's relationship with the child;
- (k) a health history of the prospective Special Guardian including details of any serious physical or mental illness, any hereditary disease or disorder or disability;
- (l) a description of how the prospective Special Guardian relates to adults and children;
- (m) previous experience of caring for children;
- (n) parenting capacity, to include an assessment of the prospective Special Guardian's ability and suitability to bring up the child;
- (o) where there have been any past assessments as a prospective adopter, foster parent or Special Guardian, relevant details as appropriate;
- (p) details of income and expenditure;
- (q) information about the prospective Special Guardian's home and the neighbourhood in which he lives;
- (r) details of other members of the household and details of any children of the prospective Special Guardian even if not resident in the household;
- (s) details of the parents and any siblings of the prospective special guardian, with their ages or ages at death;
- (t) the following information:-

- (i) religious persuasion;
- (ii) educational history;
- (iii) employment history; and
- (iv) personality and interests;

- (u) details of any previous family court proceedings in which the prospective Special Guardian has been involved (which have not been referred to elsewhere in this report);
- (v) a report of each of the interviews with the three persons nominated by the prospective Special Guardian to provide personal references for

him;

- (w) whether the prospective Special Guardian is willing to follow any wishes of the child or his parents in respect of the child's religious and cultural upbringing;
- (x) the views of other members of the prospective Special Guardian's household and wider family in relation to the proposed special guardianship order;
- (y) an assessment of the child's current and future relationship with the family of the prospective Special Guardian;
- (z) reasons for applying for a Special Guardianship order and extent of understanding of the nature and effect of Special Guardianship and whether the prospective Special Guardian has discussed special guardianship with the child; (aa) any hopes and expectations the prospective Special Guardian has for the child's future; and (bb) the prospective Special Guardian's wishes and feelings in relation to contact between the child and his relatives or any other person the local authority considers relevant.

5. In respect of the local authority which completed the report –

- (a) name and address;
- (b) details of any past involvement of the local authority with the prospective Special Guardian, including any past preparation for that person to be a local authority foster parent or adoptive parent or Special Guardian;
- (c) where section 14A(7)(a) of the Act applies and the prospective Special Guardian lives in the area of another local authority, details of the local authority's enquiries of that other local authority about the prospective Special Guardian;
- (d) a summary of any Special Guardianship support services provided by the authority for the prospective Special Guardian, the child or the child's parent and the period for which those services are to be provided; and
- (e) where the local authority has decided not to provide special guardianship support services, the reasons why.

6. A summary prepared by the medical professional who provided the information referred to in paragraphs 1(l) and 4(k).

7. The implications of the making of a Special Guardianship order for –

- (a) the child;
- (b) the child's parent;
- (c) the prospective Special Guardian and his family; and
- (d) any other person the local authority considers relevant.

8. The relative merits of Special Guardianship and other orders which may be made under the Act or the Adoption and Children Act 2002 with an assessment of whether the child's long term interests would be best met by a Special Guardianship order.

9. A recommendation as to whether or not the Special Guardianship order sought should be made in respect of the child and, if not, any alternative proposal in respect of the child.

A recommendation as to what arrangements there should be for contact between the child and his relatives or any person the local authority consider relevant.



**E X T R A C T**

**from the minutes of the Executive Board meeting**

**held on Tuesday 17 March 2009**

**161 KEY DECISION – RESIDENCE ORDERS AND SPECIAL GUARDIANSHIP  
ORDERS IN CHILDREN’S SOCIAL CARE**

Consideration was given to a report of the Acting Corporate Director of Children’s Services, copies of which had been circulated.

**RESOLVED that the revised policies and procedures for Residence Orders and Special Guardianship Orders, including the policies for payment of allowances be approved.**

**Reasons for the above decisions:**

- The formulating of a protocol in respect of the payment of allowances for these orders will ensure there is a robust framework for decision making and the allocation of funds.

**Other options considered:**

- A number of different schemes and policies from several local authorities were considered in relation to both orders and the proposed schemes contained within the report were considered to best meet the needs of the City.
- These policies give the department consistency in relation to the support of families and a more acceptable means of achieving permanency for a child.

A handwritten signature in black ink, appearing to read 'Carol Jones'.

Deputy Chief Executive/Corporate Director of Resources