

**Halton’s Special Guardianship Offer**



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# What is Special Guardianship?

Special Guardianship (SG) came into force on 30 December 2005, as part of the [Adoption and Children Act 2002, Section 115](http://www.legislation.gov.uk/ukpga/2002/38/section/115). It offers a real alternative to long-term foster placements or adoption for those children who, for whatever, reason cannot live with their birth parents.

Special Guardianship allows children to remain within the family unit or with another significant person. It allows children to have a sense of normality especially for those young people who may resent social workers or the stigma of being ‘in care’.

The real emphasis behind Special Guardianship is to foster a lifelong relationship between the child, the Special Guardian and their family.

A Special Guardianship Order and Child Arrangements Order (formerly known as a Residence Order) are private law orders.  Legal aid can be available for such orders but will be obtained on a means and merit basis. It can take up to four weeks for the Legal Aid Agency to make a decision and it is not guaranteed it will be granted.

If the Local Authority (Halton Borough Council) has started care proceedings, or wishes for a family member to seek a private order to prevent issuing care proceedings, they may consider making a contribution towards the legal costs of applying for such an order. This is on the understanding that the work is undertaken by a solicitor who is a member of the Children’s Panel, and the work is charged at Legal Aid Agency rates.

# When is Special Guardianship used?

If parents cannot meet their children’s needs and keep them safe, the children may be at risk of suffering significant harm.

If a child is at immediate risk of harm, they are removed from the care of their parents by either:

* The Police: under Police Protection
* The court: under an Emergency Protection Order- Section 44 of The Children Act 1989
* The Local Authority: Voluntary Accommodation- Section 20 of The Children Act 1989. This is an agreement between the Local Authority and the parents. The child is placed in foster care or with a family member until final decisions are made about their future. Under section 20, parents retain full parental responsibility for the child.

If the Local Authority (Halton Borough Council) does not think it is safe for a child to return home, they may make an application to the court for an Interim Care Order.

Parents will be assessed to determine their capacity to meet their child/children’s needs long-term and their ability to keep them safe; this may include a parenting assessment or psychological/psychiatric assessments.

Parents will also be expected to engage in services and support offered which may include attending domestic violence or substance misuse services and make the necessary changes within a time frame that considers the child’s needs.

If in the event parents are unable to achieve this, there needs to be a plan in place for the child’s future so that he/she can be placed with a permanent family without delay. This is called parallel planning and prevents any unnecessary anxiety or uncertainty for the child.

The Local Authority will help parents to identify possible family members or significant persons who can care for the child/ren long term if they cannot return home.  This can be done through the process of Family Group Conference.

It is important to note that not all children under Special Guardianship have been in care or ‘looked after’ by the Local Authority or under Social Services. A parent may allow a child to live with a family member /friend under Special Guardianship for a number of reasons. For example:

|  |  |
| --- | --- |
| **If the parent has not bonded with the child** | **If the parent is in poor health** |

# What are the alternatives?

There are several alternatives to Special Guardianship.

If there are no suitable family members or significant persons, the child may be placed in long-term foster care or adopted.

**Sometimes no order is necessary when everyone is in agreement about where the child should live. However, if a child is living with a person who is not related for more than 28 days this is called Private Fostering and Children’s Services must be notified.** More information can be found on Halton Borough Council’s website under **[private fostering.](https://www3.halton.gov.uk/Pages/EducationandFamilies/childrensocialcare/privatefostering.aspx" \o "Read more about Private fostering" \t "_blank)**

A Child Arrangement Order can be granted by a court when there is no agreement about where the child should live. The person who is granted a Child Arrangement Order obtains parental responsibility for the child.

Sometimes children need more security and certainty than Special Guardianship can provide, and adoption is an option that can be considered. Birth parents lose parental responsibility following an Adoption Order being made.

The legal situation can be complicated. A solicitor can give you more information and advice and/or you may wish to discuss your situation with a social worker.

# Who can apply to be a Special Guardian?

Anyone over the age of 18 who is significant in the child’s life for example: grandparents, aunt/uncle or brother/sister or a family friend. It cannot be the child’s parent. The foster carer can also apply for Special Guardianship if the child has lived with them for at least a year. If less than a year, the court may grant leave to the Foster carer to apply for the Special Guardianship Order (SGO). A joint application can be made by couples and they do not have to be married or in a civil partnership.

When making an application for a Special Guardianship Order consent is needed from the person with parental responsibility which may be:

|  |  |
| --- | --- |
| The parent | A person with a Child Arrangement Order |
| The Local Authority, when the child is ‘looked after’ | Or each of those who have parental responsibility. |

If consent is not given, the court can accept the application and grant a Special Guardianship Order, if deemed in the child’s best interest.

The Local Authority cannot make an application for a Special Guardianship Order but will support an application if it is seen to be in the child’s best interest.

# Expectations of the Special Guardian

A Special Guardian is someone who legally commits to raising a child or young person until they reach 18 years old and who fulfils the responsibilities of a parent.

The Special Guardian is responsible for making the day-to-day decisions for the child and ensuring the child’s needs are met including taking them to school and to health appointments.



# Parental responsibility

Upon the making of the Special Guardianship Order a Special Guardian acquires Parental Responsibility (PR), and is entitled to exercise PR to the exclusion of any other person holding it except another Special Guardian.

Parents retain some parental responsibility, but would only need to be consulted when major decisions had to be made. This is, of course, different from adoption where the birth parents lose parental responsibility entirely.

The Special Guardian cannot change the child’s surname or remove the child from the country for longer than three months without the written consent of all those with parental responsibility or an order of the court This can be made at the same time as the Special Guardianship Order and would apply if the child was going to live abroad with the Special Guardians.

# Special Guardianship assessment

To ensure a person is suitable to be a Special Guardian they will need to be assessed. The Special Guardianship assessment is similar to that of the parenting assessment and will determine if you have the capacity to meet the long term needs of the child and keep them safe. The assessment is undertaken by either a social worker from the Special Guardianship Team or an independent social worker.

## Medical

You will be provided with a medical form which will need to be taken to the GP who will undertake the medical. The GP will then send back the medical assessment to Children’s Services. This is a chargeable service. (Medicals are at a cost of £73.86 per person in 2017.)

## Disclosure and Barring Services (DBS) checks

The form will be completed with the help of the allocated social worker and you will need to provide proof of identify.  You will not be charged for DBS costs.

## References

You will need to provide details of at least three people who have known you for a substantial length of time and who are willing to give you a character reference. This may be your church minister, family member or friend. It is preferred that one reference is from a professional person, but it is not essential.

Once the Special Guardianship assessment is completed it will be sent to the court along with all other information, assessments, reports and statements. The court/ judge will read and listen to all the evidence presented, and after taking into consideration the wishes and feelings of the child/children will make a final decision.

When a Special Guardianship Order is granted the child will then be placed with the Special Guardianship family, (if not living there already). The child no longer requires a social worker as their needs will be met within the placement. However as the Special Guardian you will receive a Special Guardianship support package from the Local Authority.

If the Special Guardianship family live out of the Local Authority area, three years after the Special Guardianship Order has been granted it will be the responsibility of the Local Authority in which they reside to provide ongoing support although any financial allowance and contact support will remain the responsibility of the placing authority.

It is important for children to have contact with birth parents and family as it allows them to maintain a relationship and have a sense of identity. It should be a positive experience but there are occasions when it is not seen as in the child’s best interest. This may be because the child presents with emotional or behavioural difficulties before, during or after contact. It could also be because the parent says things which may upset the child or there are occasions when a child will simply refuse to go. While it is important for Special Guardians to promote and encourage contact they cannot force a child to attend.

The level of contact with the birth family recommended by the local authority will be something that is discussed with you as part of the support package.

# Applications for Contact Order

Parents can make an application for a Contact Order and if granted contact cannot be changed without going back to court.

The Local Authority are not in favour of a Contact Order (unless in special circumstances) as it prevents the Special Guardian from varying the contact arrangements to suit the changing needs of the child. However, the Special Guardian can terminate the contact session if the child becomes distressed or is unsafe or stop contact if the child is at risk of or suffering significant harm.

Generally it is expected that Special Guardians will supervise contact between the child and their parents and family members. In some circumstances it may be necessary for the contact to be supervised by a professional following a risk assessment. However, work can be undertaken with the Special Guardian and parents to reduce risk and put safety measures in place so that eventually the Special Guardian will take on the supervisory role within a reasonable timeframe.

If direct contact cannot take place then telephone contact may be an alternative.

If no Contact Order is in place and the Special Guardian is considering making changes to the contact arrangements, such as allowing it to become unsupervised, it is advised that they first seek advice from the Special Guardianship Team.

The Special Guardian Team provides advice on contact issues which may include arranging mediation between the Special Guardians and birth parents/family or providing training.

# Leaving care services for children under Special Guardianship Order

[Section 24(1) of the Children Act 1989](http://www.legislation.gov.uk/ukpga/1989/41/contents), as amended, provides that a young person aged 16 – 17 who is the subject of a special guardianship order, or a young person aged 18 – 21 (amended by the Children Social Work Act 2017 to be 18 – 25), who was the subject of a Special Guardianship order when he reached 18, and in either case immediately before that order was made, he was looked after, accommodated or fostered by a Local Authority, is a person who qualifies for advice and assistance under s24A and s24B of the Act.

With respect to financial assistance being provided to a Special Guardian where the child is reaching 18 years of age, a Benefits Advisor may be asked to undertake a review of the family and young person’s entitlements prior to the young person reaching the age of 18. If the young person does not have any benefit entitlement in their own right, any ongoing Special Guardianship allowance will remain in place until the last day of the academic term of the year when the child reaches the age of 18.

Prior to the Special Guardianship Order being made a social worker will visit your home to undertake the assessment for the support package. It will identify any support that is needed. The court will not grant the order without having sight of the Special Guardianship support package. It is therefore essential that all relevant information is provided as soon as possible to prevent delay in this process.

# What kind of support can I get if I am a Special Guardian?

Under the Adoption and Children Act 2002 financial support and other services may be available for the special guardian and the child. However, if a child is not (or was not) looked after by a Local Authority, then there is no entitlement to an assessment for Special Guardianship Support services, although it is possible to make a request for this assessment.

Examples of possible services:

Biological parents remain financially responsible in law for their child even when a Special Guardianship Order has been issued and so in most cases they will be under an obligation to pay maintenance for the child’s upbringing.

As a Special Guardian you are entitled to ask the Local Authority for an assessment for financial support, any assessment is means tested and guidance is given in The Special Guardianship Regulations 2005.

A financial assessment is undertaken to see if you are entitled to a Special Guardian allowance. This is means tested and considers the ongoing needs of the child. A financial assessment form and financial contract (which you will be provided with) has to be completed and returned. Whatever information is on the form MUST be backed up in the documentation and must be easily identifiable from bank statements otherwise you will need to provide additional supporting documentation. Partners of prospective Special Guardian’s and any adults living in the home need to be included in the financial assessment.

If a Special Guardianship allowance has been agreed it is expected that the allowance will help manage the day to day expenses of caring for the child. It is also expected to cover any additional expenses incurred for equipment, activities and travel expenses for contact and other relevant costs associated with raising the child.

The Special Guardianship allowance will be reviewed annually. If you’re financial circumstances change you are expected to notify the Local Authority as soon as possible so that your finances can be reassessed.

If you are a former foster carer your fostering payments will continue for 2 years, and you will then be assessed for ongoing financial support, which legally has to be reviewed annually.

The Children in Care Team will provide assistance for the purpose of ensuring the continuance of the relationship between the Special Guardian and the child including arranging training for the Special Guardian if needed.

If the child requires any therapeutic needs which were not identified when the Special Guardianship support package was made, the Special Guardian will be expected to initially make contact with the Child and Adolescence Mental Health Service, (CAMHS) to explore whether these resources are appropriate.  If a service could not be offered, children social care may consider sourcing alternative provision.

# Adoption Support Fund

Some children will be entitled to support through The Adoption Support Fund (ASF) which has been established because many families need some kind of therapeutic support following adoption or Special Guardianship and too many have struggled to get the help they need in the past. The Fund enables you to access the services needed more easily in future.

The Fund is available for children living in England up to and including the age of 21 (or 25 with a Statement of Special Educational Needs or Education Health & Care Plan) who are:

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| --- | --- |
|  | Adopted and were previously in local authority care in England, Wales, Scotland and Northern Ireland. |
|  | Adopted from overseas. |
|  | Subject to a Special Guardianship Order and were previously in care |

Comprehensive online information for Special Guardians has been published by the [Family Rights Group](https://www.frg.org.uk/need-help-or-advice/family-and-friends-carers/the-adoption-support-fund-and-special-guardians)

To access the Fund, you will need to have an assessment of your family’s adoption support needs by the local authority. This is a current legal obligation of all local authorities.

The Local Authority that places the child with you is responsible for assessing your adoption support needs for three years after the adoption order. After three years it becomes the responsibility of the local authority where you live (if different).

Where the assessment identifies that therapeutic services would be beneficial to your family, the Local Authority will apply to the Fund on your behalf, who will then release funding to the Local Authority.

The Local Authority social worker will be expected to talk to you about who can provide the types of service that you need and which provider you would prefer.

The Fund will provide money to the local authority to fund a range of therapeutic services.

The therapies funded are those identified to help achieve the following positive outcomes for you and your child:

|  |  |
| --- | --- |
|  | Improved relationships with friends, family members, teachers and school staff |
|  | Improved engagement with learning |
|  | Improved emotional regulation and behaviour management |
|  | Improved confidence and ability to enjoy a positive family life and social relationships |

To achieve these outcomes the Fund will pay for therapeutic support and services including but not restricted to:

* [Therapeutic parenting training](http://www.first4adoption.org.uk/adoption-support/adoption-support-services#parenting_skills)
* Further more complex assessment (e.g. [CAMHS](http://www.first4adoption.org.uk/adoption-support/adoption-support-services#camhs) assessment, multidisciplinary assessment including education and health, cognitive and neuropsychological assessment, other mental health needs assessment.)
* [Dyadic Developmental Psychotherapy](http://www.first4adoption.org.uk/adoption-support/adoption-support-services#ddp)
* [Theraplay](http://www.first4adoption.org.uk/adoption-support/adoption-support-services#theraplay)
* [Filial therapy](http://www.first4adoption.org.uk/adoption-support/adoption-support-services#filial_therapy)
* [Creative therapies](http://www.first4adoption.org.uk/adoption-support/adoption-support-services#creative_arts_therapies) e.g. art, music, drama, play
* [Eye Movement Desensitisation and Reprocessing Therapy](http://www.first4adoption.org.uk/adoption-support/adoption-support-services#emdr) (EMDR)
* [Non-Violent Resistance](http://www.first4adoption.org.uk/adoption-support/adoption-support-services#nvr) (NVR)
* [Sensory integration therapy/Sensory attachment therapy](http://www.first4adoption.org.uk/adoption-support/adoption-support-services#sensory_integration_therapy)
* [Multi Systemic Therapy](http://www.first4adoption.org.uk/adoption-support/adoption-support-services#mst)
* [Mentalisation Based Therapy](http://www.first4adoption.org.uk/adoption-support/adoption-support-services#mentalisation)
* Psychotherapy
* Specialist clinical assessments where required (e.g. Foetal Alcohol Spectrum Disorder)
* Extensive life story work with a therapeutic intervention (where therapy is used to help the young person understand and cope with the trauma and difficulties that their life story work might revisit)
* Respite care (where it is part of a therapeutic intervention)

Please note however this fund will cease in April 2020.

# Websites:

* [Court Service website](https://www.gov.uk/government/organisations/hm-courts-and-tribunals-service) –  to make an application to the court
* [Family Rights Group](http://www.frg.org.uk/) – charity working with parents whose children are in need, at risk, or are in the care system, and with wider family who are raising children unable to remain at home
* [Legislation](http://www.legislation.gov.uk/ukpga/1989/41/part/II/crossheading/special-guardianship) – Children Act 1989
* [Special Guardianship, kinship care and private fostering](https://corambaaf.org.uk/fostering-adoption/special-guardianship-kinship-care-and-private-fostering) – Coram BAAF guidance
* [Special Guardianship information](http://www.protectingchildren.org.uk/cp-topics/adoption-fostering-and-special-guardianship/special-guardianship/) – Coram Children’s Legal Centre
* [Special guardianship guidance](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/656593/Special_guardianship_statutory_guidance.pdf) – Statutory guidance for local authorities on the Special Guardianship Regulations 2005 (as amended by the Special Guardianship (Amendment) Regulations 2016) February 2016.



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