

# Financial support and special guardianship

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The legal and practice framework relevant  
to special guardianship allowance

**Briefing by  
Family Rights Group  
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Family Rights Group  
The Print House  
18 Ashwin Street  
London  
E8 3DL

**Free Advice Line**  
0808 801 0366  
(Monday to Friday  
9.30am to 3pm)





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## 1 Family Rights Group

Family Rights Group (FRG) promotes policies and practices that keep children safe within their family and strengthen the family and community networks of those children who cannot live at home. We campaign for families to have their voice heard, be treated fairly and get help early to prevent problems escalating.

Founded in 1974, the charity provides specialist legal advice to parents whose children are in need, at risk or in the care system and kinship carers. This year we will advise 7000 parents, relatives and friends about their rights and options when social workers or courts make decisions about their children's welfare.

Family Rights Group's combines commitment to human rights and social justice with expertise in child welfare law, policy and practice. The charity undertakes a range of specialist [legal and practice advice](#) and policy activities in relation to kinship care, including special guardianship.

Family Rights Group provides legal and policy support and secretariat to the [Kinship Care Alliance](#) and has done so since the Alliance's conception. From 2018, Family Rights Group supported a cross-party group of parliamentarians to establish the Parliamentary Taskforce on Kinship Care. The Taskforce existed from 2018-2021 with the aim to raise awareness about, and support for, children in kinship care and to highlight this as an option for children who cannot live with their parents. The Taskforce undertook the first ever parliamentary inquiry into kinship care, taking extensive evidence from kinship carers and children raised in kinship care. Family Rights Group provided legal and policy secretariat to the Taskforce throughout.

Family Rights Group serves as the secretariat for the [All Party Parliamentary Group \(APPG\) on Kinship Care](#) which was established in March 2021 and succeeds the Parliamentary Taskforce on Kinship Care. Family Rights Group sits on the Adoption and Special Guardianship Leadership Board.

## 2 Introduction

Special guardianship is a type of kinship care arrangement. As helpfully and succinctly summarised in the report by the [Parliamentary Taskforce on Kinship Care](#), special guardianship:

'... secures a child's long-term home with someone who is not their parent. It lasts until the child turns 18. The order is often seen as having similarities to adoption, but a distinctive feature of a special guardianship order is that (unlike an adoption order) it restricts the birth parents' rights but does not permanently end them. It is therefore particularly appropriate for kinship care arrangements, as the legal link to the birth family is retained. Special guardians gain an enhanced form of parental responsibility for the child, which they can use to the exclusion of all others.<sup>1</sup> They should still consult parents and others with parental responsibility about important decisions relating to the child, but ultimately, they can make final decision themselves about most things.<sup>2</sup> A court cannot make a special guardianship order unless it has received a report from children's services confirming that the applicant would be a suitable special guardian.<sup>3</sup>

**This briefing note** concerns the legal framework relevant to provision of financial support to special guardians and prospective special guardians by local authorities in England. It addresses the provision of regular financial support by way of 'special guardianship allowance'.

## 3 The law

### The sources of law

The primary legislation providing for special guardianship is the Children Act 1989, at sections 14A to 14G. The law concerning provision of financial support in the context of special guardianship is found in three key places:

- Primary legislation: [Section 14F of the Children Act 1989](#)
- Government regulations: [The Special Guardianship Regulations 2005 \(as amended by the Special Guardianship \(Amendment\) Regulations 2016\)](#). Financial support and review of financial support is dealt with in [Chapter 2 of the Regulations](#)

<sup>1</sup> See [section 14C Children Act 1989](#)

<sup>2</sup> A special guardian may not, however, change the child's surname or take the child out of the country for more than three months without the written consent of all others with parental responsibility

<sup>3</sup> See [section 14A\(11\) Children Act 1989](#)

- Government statutory guidance: [The Special Guardianship Guidance: Statutory guidance for local authorities on the Special Guardianship Regulations 2005 \(as amended by the Special Guardianship \(Amendment\) Regulations 2016\)](#). As statutory guidance, this is guidance which local authorities must have regard to. This means it should be followed unless there is good reason not to.<sup>4</sup>

This should however all be set in the wider context of the [law relating to kinship care](#). This includes statutory guidance which requires all local authorities (councils) in England to **publish** a family and friends care policy which should:

- Be designed to ensure children living in kinship care receive the support they/their carers need to keep them safe and well
- Have details of the support services that children's services can provide
- Set out the services that are available to kinship carers whatever the type of kinship care arrangement (services should be particularly aimed at preventing children becoming (or remaining) looked after in the care system, wherever possible).<sup>5</sup>

#### Overview: 14 key features of the framework for financial support for special guardianship

*"No one with a special guardianship order has a right to assistance. At best, some have a right to an assessment of their need for support. Whether provision follows is a matter for local authority discretion and financial support may come with conditions attached"<sup>6</sup>*

1. Provision for financial support for special guardians as well as prospective special guardians<sup>7</sup>
2. Statutory guidance prescribing that 'financial issues' should not be the sole reason for a special guardianship arrangement failing to survive. The central principle is that financial support should be payable in accordance with the regulations to help secure a suitable special guardianship arrangement where such an arrangement cannot be readily made because of a financial obstacle
3. A duty, in primary legislation, on local authorities to make provision in their area for a range of special guardianship support services<sup>8</sup>
4. Regulations which prescribe the special guardianship support services that should be available in a local area. These include counselling, advice and information, **as well as financial help** and help with contact arrangements<sup>9</sup>
5. An absence of a legal right for all (prospective) special guardians to have their support needs assessed
6. A duty on local authorities to assess the need for support services, including financial help, **only if** a child was looked after in the care system immediately prior to a special guardianship order being made.<sup>10</sup> In all other cases assessment is a matter of local authority discretion
7. Statutory guidance that support should be payable in accordance with the regulations to help secure a suitable special guardianship arrangement where such an arrangement cannot be readily made because of a financial obstacle
8. A series of local authority discretions regarding: precisely how financial support is to be calculated and whether to provide financial support; and the level of financial support (but regarding the **rate** of regular allowances see [section 5 below](#))
9. Local authority discretion as to the way in which financial support is provided (by way of regular allowance, as a lump sum, or through an agreement to make payment in instalments)<sup>11</sup>
10. Regulations imposing conditions on the provision of regular financial support and the power for local authorities to make regular financial support subject to any other conditions they consider appropriate<sup>12</sup>
11. Regulations setting out markers for review, continuation, and cessation of financial support, including once a child turns 18
12. Regulations and statutory guidance direct local authorities to have regard to how much fostering allowance would be paid had the child been fostered. This is a message reinforced by a body of case law in the High Court
13. Precludes any element of reward or remuneration for special guardians (the exception being where the child was previously cared for by the special guardian as a foster carer)
14. Prohibition on there being overlap between support under the tax and benefits system and financial support provided by local authorities. Explicit encouragement to local authorities to support (prospective) special guardians to access their welfare benefit entitlements<sup>13</sup>

<sup>4</sup> See R v Islington LBC ex p Rixon [1998] 1 CCLR 119

<sup>5</sup> See [paragraphs 2.12, 4.2 and 4.6 of the Family and friends care Statutory Guidance for local authorities](#)

<sup>6</sup> Jordan, L. and Lindley, B. (2005) 'Special Guardianship: An Overview of the Legal Framework', in Jordan, L. and Lindley, B. (eds) *Special Guardianship: What Does It Offer Children Who Cannot Live With Their Parents?* Family Rights Group, p.4-22

<sup>7</sup> 'Prospective special guardian' is defined in [regulation 2 of the Special Guardianship Regulations 2005 \(as amended by the Special Guardianship \(Amendment\) Regulations 2016\)](#).

<sup>8</sup> See [section 14F Children Act 1989](#)

<sup>9</sup> See [regulation 3\(1\) and 3\(2\) of the Special Guardianship Regulations 2005 \(as amended\)](#)

<sup>10</sup> See [regulation 11\(1\) of the Special Guardianship Regulations 2005 \(as amended\)](#)

<sup>11</sup> Please see the body of this briefing for the fine detail and complexities regarding this point

<sup>12</sup> See [regulation 10](#) regarding conditions and [regulation 10\(2\)](#) specifically regarding local authority power to make financial support subject to further conditions as they deem to be appropriate

<sup>13</sup> See [paragraph 63 of The Special Guardianship Guidance: Statutory guidance for local authorities on the Special Guardianship Regulations 2005 \(as amended\)](#)



## 4 When financial support is payable and some specific examples

### When is financial support payable?

[Regulation 6 of The Special Guardianship Regulations 2005 \(as amended\)](#) sets out two broad situations where financial support is payable. These are:

- To facilitate arrangements for a person to become a child's special guardian where the local authority considers special guardianship to be beneficial to the child, or
- To support the continuation of the special guardianship arrangement after the order has been made.

As set out earlier, the legal framework for local authority provision of special guardianship support services - including financial support services - is set out in primary legislation and regulations.<sup>14</sup> But it is the statutory guidance that makes clear that:



Financial issues should not be the sole reason for a special guardianship arrangement failing to survive. The central principle is that financial support should be payable in accordance with the regulations to help secure a suitable special guardianship arrangement where such an arrangement cannot be readily made because of a financial obstacle.<sup>15</sup>



Implicit in this guidance is that no child should have to become looked after in the care system for want of appropriate support under the regulations or to access services they need. This is at one with the emphasis in Family and Friends Care: statutory guidance for local authorities that services for kinship carers should be particularly aimed at preventing children becoming (or remaining) looked after in the care system, wherever possible.<sup>16</sup>

### In what specific circumstances is financial support payable?

The regulations provide **four specific circumstances** in which such support is payable:

- It is necessary to ensure the special guardian or prospective special guardian can look after the child ([regulation 6 \(2\)\(a\)](#))
- The child has a need for special care which requires a greater expenditure of resources than would otherwise be the case because of their illness, disability, emotional or behavioural difficulties or the consequences of his past abuse or neglect ([regulation 6 \(2\)\(b\)](#))
- It is appropriate for the local authority to contribute to any legal costs, including court fees, of a special guardian or prospective special guardian, associated with any of the following ([regulation 6 \(2\)\(c\)](#)):
  - Making of a special guardianship order or any application to vary or discharge it
  - An application for an order under section 8 Children Act 1989
  - An order for financial provision to be made to or for the benefit of the child
- The local authority considers it is appropriate to contribute to the expenditure necessary for the purposes of accommodating and maintaining the child ([regulation 6 \(2\)\(d\)](#)). This includes help towards the costs of:
  - Providing furniture and domestic equipment
  - Alterations to and adaptations of the home
  - Provision of means of transport
  - Provision of clothing, toys and other items necessary for the purpose of raising the child.

### What is the scope of financial support for legal costs under the regulations and are means relevant?

A local authority can contribute to a prospective special guardian's initial legal costs. A local authority can also cover future legal costs where a special guardianship order has been made, as part of helping to support the special guardianship arrangement. [Regulation 6\(2\)\(c\)](#) (see box above) and [paragraph 40, the special guardianship statutory guidance](#) makes clear this is financial support local authorities **may** contribute if considered appropriate. It is discretionary financial assistance.

<sup>14</sup> See [section 14F Children Act 1989](#) and [regulation 3 of The Special Guardianship Regulations 2005 \(as amended\)](#)

<sup>15</sup> See [paragraph 37 of The Special Guardianship Guidance: Statutory guidance for local authorities on the Special Guardianship Regulations 2005 \(as amended\)](#)

<sup>16</sup> See [paragraphs 12, 4.2 and 4.6 of the Family and Friends Care: Statutory Guidance for Local Authorities](#)



A local authority **must** disregard means when providing help with legal costs relating to any of the matters set out in the regulations (see list in the box above). This includes disregarding means when looking at helping a (prospective) special guardian with the cost of a court fee. It is important for prospective and current special guardians that local authorities publish information about the circumstances, and stages at which, they will provide help with legal costs.

#### Can financial support take the form of a settling in allowance and are means relevant?

Yes. This type of financial support could fall within the scope of [regulation 6\(2\)\(a\)](#) mentioned above. That is the regulation that states a local authority may provide financial support where necessary to ensure the special guardian (or prospective guardian) can raise the child.

The local authority is permitted to (**may**) disregard means where they are considering providing financial support in respect of a 'settling-in grant'. This means they don't have to take into account the income and resources of the (prospective) special guardian.

At [paragraph 67, the special guardianship statutory guidance](#) explicitly states that 'It is not expected that this payment would be means-tested, but local authorities might, for example, want to means test any contribution to an adaptation to the home'.

#### Can financial support be provided to help with costs relating to contact?

Yes. [Paragraph 41 of the special guardianship statutory guidance](#) recognises that in many instances, contact between the child (raised by a special guardian), their relatives and others the child has a beneficial relationship with 'is very important'. The statutory guidance contemplates recurring (regular) costs associated with contact can be part of financial support local authorities provide. This can be looked upon as part of ensuring the special guardian can raise the child (that is under [regulation 6\(2\)\(b\)](#)).

#### The relevance of means

The statutory guidance makes clear at paragraph 67 that the local authority **may** disregard the special guardian's means where they are considering providing financial support for contact. The guidance further states that where, for example, the local authority wants to 'underline the value of and facilitate contact for the child with a sibling' they can achieve this by **not** means testing payments to support this.<sup>17</sup>

## 5 Rates and calculation of regular, periodical payments for special guardians – 'special guardianship allowance'

The law relevant to the rates, and calculations, for regular periodical payments in special guardianship comes from:

- [Regulation 13 of the Special Guardianship Regulations 2005 \(as amended\)](#), which deals with financial needs assessments
- A body of High Court case law
- The [Special Guardianship: statutory guidance for local authorities](#), beginning with a clear statement at paragraphs 63 to 65.

Decisions and focus reports of the Local Government and Social Care Ombudsman also provide a crucial touchstone for local authorities for good and lawful practice in relation to financial support for special guardianship. Whilst decisions are not legally binding on local authorities, in the significant majority of cases, the authority will implement the Ombudsman's recommendations.

#### Assessing the need for financial support (including, but not limited to, regular payments) and deciding the amount of financial support

The means of a (prospective) special guardian will be relevant both:

- When a local authority assesses the need for any form of financial support, and
- When a local authority is deciding the amount of any financial support to be provided. This is the case unless a prescribed exception applies (discussed below).

[Regulation 13](#) of the Special Guardianship Regulations 2005 places **five key requirements** on local authorities when assessing the need for financial support or when deciding the amount of financial support. These are shown in the table below together with the relevant provisions of statutory guidance:

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<sup>17</sup> Note that the statutory guidance recognises help with contact related costs may also be made in cash as part of making provision under [regulation 3\(1\)\(b\) of the Special Guardianship Regulations 2005 \(as amended\)](#)



The regulations prescribe that a local authority <u>must take into account</u>	Relevant provisions from statutory guidance
<p>1. Any other grant, benefit, allowance or resource available to the person in respect of their needs as a result of becoming a special guardian (<a href="#">regulation 13(2)</a>)</p>	<p><a href="#">Paragraph 63 of the Special Guardianship: statutory guidance for local authorities</a> is explicit in stating that:</p> <ul style="list-style-type: none"> <li>• It is important to ‘ensure special guardians are helped to access benefits to which they are entitled’</li> <li>• Local authority should ‘endeavour to ensure’ (prospective) special guardians are aware of, and taking advantage of all benefits and tax credits available to them</li> <li>• Financial support under the regulations cannot duplicate any other payment available to the (prospective) special guardian.</li> </ul> <p><a href="#">Paragraph 4.20 of the Family and Friends Care Statutory Guidance</a> states:</p> <ul style="list-style-type: none"> <li>• The family and friends care policy that all local authorities are required to have should signpost local and other sources of information and advice, such as benefits advice services. And that in turn, these services:</li> <li>• Should be made aware of the particular difficulties which may face family and friends’ carers across the spectrum of circumstances, in order to provide a responsive service which recognises the key role they play in avoiding the need for children to become looked after in the care system</li> </ul>
<p>2. The (prospective) special guardian’s financial resources including any tax credit or benefit, which would be available if the child lived with them (<a href="#">regulation 13(3)(a)</a>)</p>	<p>This includes:</p> <ul style="list-style-type: none"> <li>• Significant income from any investments</li> <li>• And, as stated in the regulations, tax credit or benefit available to the (special) guardian if the child lived with them.</li> </ul> <p>It does <b>not</b> include the (prospective) special guardian’s home</p>
<p>3. The amount required by the (prospective) special guardian in respect of their reasonable outgoings and commitments (<a href="#">regulation 13(3)(b)</a>)</p>	<p>For example, housing and transport costs, daily living expenses but not outgoings in respect of the child</p>
<p>4. The financial needs of the child (<a href="#">regulation 13(3)(c)</a>).</p>	<p>For example, because of special diet, the need for replacement bedding</p>
<p>5. The financial resources of the child (<a href="#">regulation 13(3)(c)</a>).</p>	<p>For example, a trust fund.</p>

The regulations and guidance do not define precisely what ‘take into account’ means. But, as highlighted in the table above, paragraph 63 of the special guardianship statutory guidance does specify that financial support under the regulations **cannot** duplicate any other payment available to the (prospective) special guardian.

## When can means be disregarded when looking at financial support for (prospective) special guardians?

It is [regulation 13](#) that provides for when the local authority has discretion to disregard means and when they must disregard them.

A local authority **must** disregard means:

6. If providing help with initial legal costs. This includes disregarding means when looking at helping a (prospective) special guardian with the cost of a court fee. The local authority **must** also disregard means if contributing to future legal costs once a special guardianship order has been made.<sup>18</sup> See [here](#) within this briefing for the details of the help with legal costs provided for in the regulations.

A local authority **may** disregard means when looking at providing financial support in respect of the following:

7. When contributing to initial costs by way of a 'settling-in grant'. The special guardianship statutory guidance explicitly states that it is not expected that this payment would be means tested. It distinguishes this from local authority contributions to the costs of home adaptations, stating local authorities may want to means test contributions to those costs
8. Recurring travel costs relating to contact arrangements costs with relatives
9. Any need for special care that the child being raised under special guardianship has which requires a greater expenditure of resources than would otherwise be the case because of his illness, disability, emotional or behavioural difficulties or the consequences of his past abuse or neglect
10. Where they are considering including an element of remuneration in financial support payments to ex-foster carers.

## What does statutory guidance say about the rate for regular periodical payments and what weight does the guidance carry?

Paragraph 65 of the special guardianship statutory guidance states:

“

In determining the amount of any ongoing financial support, the local authority should have regard to the amount of fostering allowance which would have been payable if the child were fostered. **The local authority's core allowance plus any enhancement that would be payable in respect of the particular child, will make up the maximum payment the local authority could consider paying the family.** Any means test carried out as appropriate to the circumstances would use this maximum payment as a basis.

”

As statutory guidance for local authorities, local authorities '**must have regard to it when carrying out their duties relating to the provision of assessing and supporting special guardianship**'. The courts have said 'having regard to' in the context of statutory guidance means the guidance should be followed unless there is good reason not to. If a local authority is not following this guidance families can ask for what the 'good reason' for not doing so it and for that to be put in writing. Departures from statutory guidance without such justification are potentially open to legal challenge – see [What have the courts said about special guardianship allowance rates?](#) below for some examples.

<sup>18</sup> As part of supporting the special guardianship arrangement pursuant to [regulation 6\(2\)\(c\) of the Special Guardianship Regulations 2005 \(as amended\)](#)



## What is the meaning of 'core allowance' 'element of remuneration' and 'enhancement'?

### Core allowance

The special guardianship statutory guidance refers to the 'core allowance' element of fostering allowance. This is the element of fostering allowance which represents the cost of maintaining a fostered child. It is the element of fostering allowance payable for all fostered children whatever their specific needs and situation.<sup>19</sup> The rate at which an individual local authority sets its core fostering allowance will equal at least the national minimum fostering allowance rates. In other cases, authorities may have adopted a higher core allowance rate.

### Element of remuneration

Both the special guardianship regulations and guidance use the phrase 'element of remuneration'. Remuneration here refers to sums over and above the core allowance that some foster carers may receive to reflect their specific skills, training and experience as applied to caring for the child/ren. Some local authorities refer to these as 'fees'.

The regulations and statutory guidance provide for only one situation in which the allowance paid to a special guardian can include an element of remuneration. This is where a special guardian was previously the foster carer for the child they will/have become the special guardian for.

See [How do the rates of financial support for special guardians who were previously the child's foster carer differ?](#) below for full details.

### Enhancement

The regulations do not use the term enhancement, but paragraph 65 of the statutory guidance does: 'The local authority's core allowance **plus any enhancement** that would be payable in respect of the particular child, will make up the maximum payment the local authority could consider paying the family.' The meaning of 'enhancements' is not included within the guidance but the nature of an enhancement was addressed in the judgment in the case of [B v London Borough of Lewisham \[2008\] EWHC 738 \(Admin\)](#) at paragraph 52:

'The core allowance plus enhancements that forms the maximum special guardianship payment does not contain any element of remuneration. It relates to the core cost of bringing up a fostered child. Following it would not in any way introduce remuneration for special guardians. It would simply reflect the inescapable costs of bringing up a child which, if a special guardian had neither the private means nor the local authority funding to meet them, would stand in the way of a family caring for a child, however much they wished to do so.'

#### **The statutory guidance and case law taken together then make clear an enhancement:**

- Refers to an addition to the core cost of bringing up a fostered child
- It is an addition that would be payable to the child's foster carer, were the child being fostered
- Is **not** a sum added to reflect their skill or other characteristic of a foster carer or special guardian
- Is **not** remuneration/reward
- Relates to the particular (needs) of the child. It could, for example relate to the child's special education needs, the child's disability, the child's emotional wellbeing, or other complex needs.

<sup>19</sup> This is an interpretation which accords with the observations of the court in the case of [B v London Borough of Lewisham \[2008\] EWHC 738 \(Admin\)](#) and the notes accompanying the Standardised Means Test Model For Adoption And Special Guardianship Financial Support provided by the then Department for Education and Skills as referred to in that case. Note that neither the model, nor the notes are statutory in nature. But in some of their decisions, the Local Government and Social Care Ombudsman has stated they would want to see how authorities have taken account of the recommendations in the notes/model (see for example para 11 in [Local Government and Social Care Ombudsman Report no 12006209](#)).

## How is the national minimum allowance for foster carers relevant to special guardianship?

Government announced a national minimum allowance for foster carers in 2006. The aim was to provide a benchmark for the minimum rate of allowance foster carers in England. There are a series of weekly, minimum rates for children of different ages. Three separate scales are used for fostering in London, the South-East and then the rest of England. Updated rates for each new financial year are published on the [government website](#).

The national minimum allowance is intended as a basic core allowance taking account of extra costs associated with children cared for in foster care. The calculation

“

*‘takes account of regular costs incurred by all foster carers. Some significant elements which apply to the majority of foster carers are not covered. These are the additional costs of birthdays, Christmas and other religious festivals, the cost of holidays, the start up costs of a child arriving in placement and other larger one-off items required during the currency of the placement.’<sup>20</sup>*

”

### The relevance of the national minimum allowance

The statutory framework leaves to local authority discretion *precisely* how financial support for special guardians is to be calculated, whether is provided and at what level. **But these discretions are not without constraint.** Statutory guidance, case law and public law principles provide the legal parameters for the exercise of the financial discretions, including in relation to special guardianship allowance rates ([see section 6 of this briefing below](#)).

But court decisions have made clear that in relation to the national minimum allowance for foster carers:

- There should be a close association between fostering allowance rates and special guardianship allowance rates
- Local authorities are expected to use national minimum fostering allowance rates as a starting point for special guardianship allowance<sup>21</sup>
- As per [paragraph 65 of the statutory guidance](#), that starting point is the relevant minimum allowance rate **plus** any enhancements (as detailed above)
- Local authorities must not pay special guardianship allowance at a reduced rate of the core fostering allowance they pay their foster carers without clear justification.<sup>22</sup>

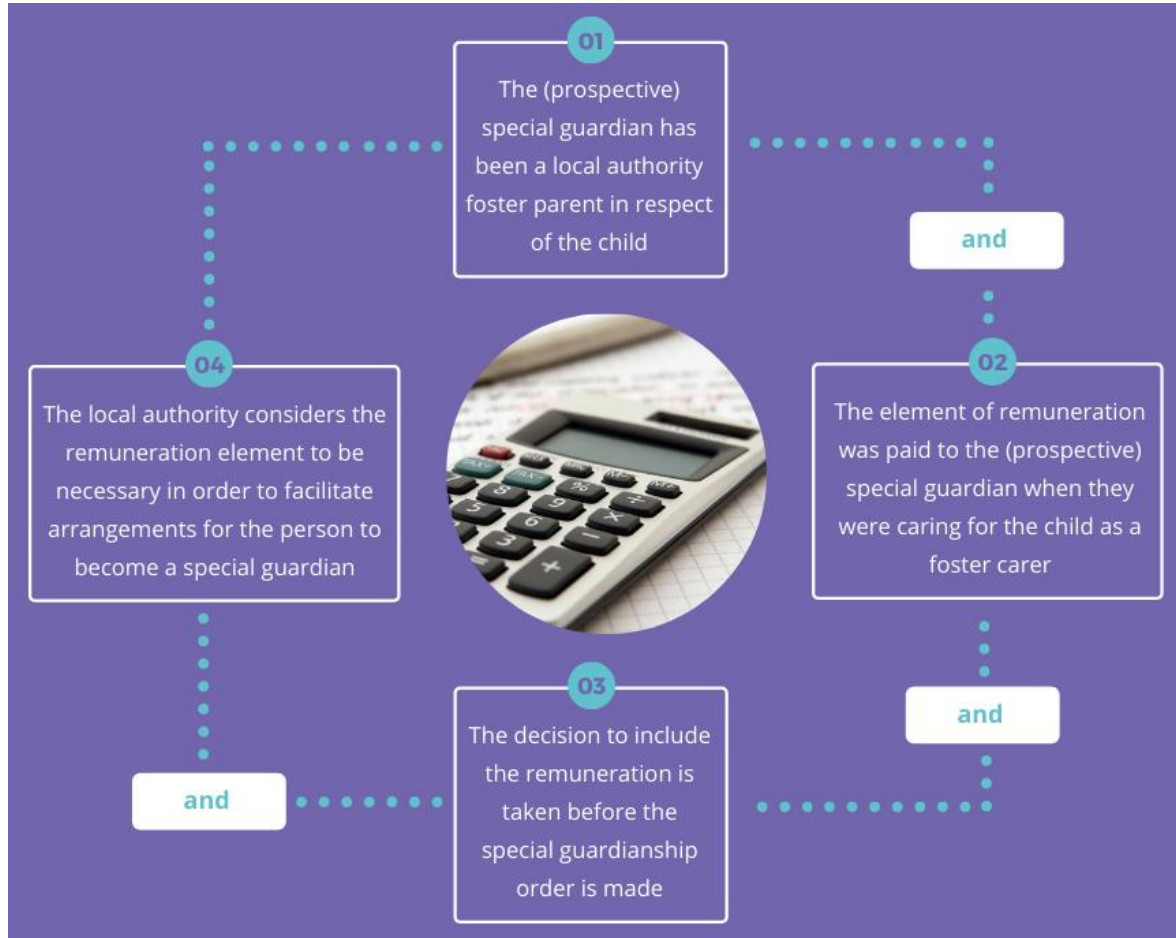
<sup>20</sup> Taken from paragraph 31 of the judgment of Black J (as she then was) in the case of [B v London Borough of Lewisham \[2008\] EWHC 738 \(Admin\)](#)

<sup>21</sup> See [B v London Borough of Lewisham \[2008\] EWHC 738 \(Admin\)](#) discussed further in section 6 of this briefing

<sup>22</sup> See [Barrett v Kirklees Metropolitan Borough Council \[2010\] EWHC 467 \(Admin\)](#) and [R \(TT\) v London Borough of Merton \[2012\] EWHC 2055 \(Admin\)](#), as detailed further in section 6 of this briefing

## How do the rates of financial support for special guardians who were previously the child's foster carer differ?

Financial support cannot normally include the payment of remuneration (wage/reward) to a (prospective) special guardian for care of the child. **But** if the (prospective) special guardian previously fostered the child then the local authority **may** continue to pay any element of remuneration the foster carer was receiving, if the following criteria are met:



If each of those conditions apply, then the local authority may do the following:

- Continue to pay that element of remuneration
- Not consider means<sup>23</sup>
- Do so for two years from the date of the special guardianship order was granted
- Continue for longer than two years if the local authority considers this to be necessary in light of the exceptional needs of the child or other exceptional circumstances.

[Paragraph 43 of the Special Guardianship statutory guidance](#) explains that: 'The purpose of the two-year transitional provision is to enable local authorities to maintain payments to foster carers who become special guardians, at the same rate as they received when they were fostering the child. This should give the family time to adjust to their new circumstances'.

### Is there a specific model local authorities must use when calculating regular periodical payments?

No. But, the Department for Education and Skills, as it then was, provided a suggested model on its website for means testing financial support under [regulation 6](#) of the Special Guardianship Regulations 2005. This is the 'Standardised Means Test Model For Adoption And Special Guardianship Financial Support'. Many local authorities still have recourse to this when calculating financial support for (prospective) special guardians variously adopting or adapting it (not least to account for changes in the welfare benefits system, such as the introduction of Universal Credit). **Local authorities should be transparent about how they calculate financial support for (prospective) special guardians including regular periodical payments** – see the [Recommendations of the Local Government and Social Care Ombudsman](#) section below.

<sup>23</sup> See [paragraph 67, final bullet point in the Special Guardianship Guidance: Statutory guidance for local authorities](#)

## Eight rules regarding tax liability, benefits and special guardianship allowance

### When someone receives a special guardianship allowance from a local authority:

1. They do not have to pay income tax on their special guardianship allowance received
2. They can claim child benefit for the child they are caring for under a special guardianship order
3. Once a child has been with their special guardian for 56 days in the last 16 weeks, their parent (or previous carer) is no longer entitled to child benefit for them. The parent's claim for child benefit will end sooner than 56 days if the special guardian makes a claim themselves and the parent agrees to the transfer of the child benefit claim to the special guardian. The child benefit will continue to go to the parent for three weeks, and then will be transferred to the new carer. In the event of a dispute, HMRC will decide on the competing claims<sup>24</sup>
4. Getting child benefit, if they already get other benefits and tax credits, might mean a special guardian becomes subject to the benefit cap<sup>25</sup>
5. Local authorities must take into account the special guardian's financial resources including any tax credit or benefit, which would be available if the child lived with them (see [regulation 13\(3\)\(a\)](#))
6. Local authorities should **not** however deduct child benefit from special guardianship allowance if the special guardian is receiving income support (as recommended by government and referred to by the Local Government and Social Care Ombudsman)<sup>26</sup>
7. Special guardianship allowance is disregarded (ignored) when assessing entitlement to means tested benefits and tax credits
8. Eligibility to child tax credit and universal credit has been limited to two children within the household since 6 April 2017. This means that the third or any subsequent children born on or after this date are not eligible for further support. Kinship children, including those under a special guardianship order, are exempt from this limit. This is regardless of the number of children already living in the household.

### What happens to special guardianship support services if the special guardian lives in, or later moves to, a different local authority area?

What happens will depend on two things. First, whether the child was looked after in the care system before the order was made. Second, whether the support is financial or non-financial support.

#### If the child was looked after in the care system before the special guardianship order was made:

- The local authority that was looking after the child, immediately before the special guardianship order was made, is responsible for providing non-financial support services
- This responsibility continues even if the child moves to a new local authority area<sup>27</sup>
- This responsibility remains for a period of three years<sup>28</sup>
- After that time, responsibility for support passes to the local authority area in which the child now lives<sup>29</sup>
- A financial support arrangement agreed prior to the special guardianship order being made, remains the responsibility of the local authority children's services department that was looking after the child before the order was made.<sup>30</sup>

#### If the child was not looked after in the care system before the special guardianship order was made:

- Responsibility for all special guardianship support lies with the local authority area in which the child now lives<sup>31</sup>

<sup>24</sup> To claim child benefit form CH2 needs to be completed. This can be done online at: <http://www.gov.uk/browse/benefits/child> or a paper form can be requested by phone 0300 200 3100

<sup>25</sup> **The benefit cap** puts an overall limit on the amount of benefit income a household can receive from universal credit and child benefit. Or, if the parent is still on legacy benefits, the cap applies to their tax credits, housing benefit, income support, jobseekers' allowance, and child benefit. Some people are exempt from the benefit cap. For example, people who are disabled, people over state pension age. For more information about who is not affected by the benefit cap see: <https://www.gov.uk/benefit-cap/when-youre-not-affected>

<sup>26</sup> See the 2013 [Local Government and Social Care Ombudsman report no 12006209](#) in which the Ombudsman notes: 'This advice from the Government is not a statutory requirement for local authorities but a recommendation to achieve a fair and consistent approach by local authorities. The Ombudsman would want to see how local authorities took account of such advice from the Government when deciding whether or not to deduct Child Benefit from those in receipt of Income Support.'

<sup>27</sup> See [regulation 5\(1\) of the Special Guardianship Regulations 2005 \(as amended\)](#) and [section 14F of the Children Act 1989](#) and [Suffolk CC v Nottinghamshire CC \[2012\] EWCA Civ 1640 at paragraph 29](#)

<sup>28</sup> See [regulation 5\(2\) of the Special Guardianship Regulations 2005 \(as amended\)](#)

<sup>29</sup> Ibid

<sup>30</sup> See [regulation 5\(2\) of the Special Guardianship Regulations 2005 \(as amended\)](#)

<sup>31</sup> See [section 14F\(11\) of the Children Act 1989](#)

The law clearly sets out all these responsibilities in the Children Act 1989 and in the Special Guardianship Regulations 2005 (as amended).<sup>32</sup> But often local authorities will still dispute which of them has responsibility. The courts have stated:

- This is a matter for the local authorities to work out between themselves
- Special guardians should not miss out on support whilst the local authorities decide which one is responsible.<sup>33</sup>

## 6 Key court decisions and decisions/reports from the Local Government and Social Care Ombudsman

### What have the courts said about special guardianship allowance rates?

As highlighted above, the statutory framework leaves to local authority discretion *precisely* how financial support for special guardians is to be calculated, whether is provided and at what level. **But these discretions are not without constraint.** Statutory guidance, case law and public law principles provide the legal parameters for the exercise of the financial discretions, including in relation to special guardianship allowance rates.

What follows is further information about the court decisions that have made clear:

- There should be a close association between fostering allowance rates and special guardianship allowance rates
- Local authorities are expected to use national minimum fostering rates as a starting point for special guardianship allowance
- Local authorities must not pay special guardianship allowance at a reduced rate of the core fostering allowance they pay their foster carers without clear justification.

**Three key pieces of case law concerned with the rate at which special guardianship allowance should be paid are judicial reviews<sup>34</sup> dealt with in the High Court. A brief summary of each follows.**

- [B v London Borough of Lewisham \[2008\] EWHC 738 \(Admin\)](#): A grandmother sought judicial review of the local authority's policy to link special guardianship allowances to its adoption allowance rather than fostering allowances. The policy was found to be unlawful. The judge found that:
  - Special Guardianship statutory guidance was to be interpreted as requiring local authorities to have a **close association between fostering allowances and special guardianship allowances**
  - Unless there is good reason to act differently, a local authority has a duty to substantially follow the special guardianship statutory guidance quoted above
  - The local authority in the case had **'...failed to understand the central importance that paragraph 65 gives to the amount paid by way of fostering allowances'** (see paragraph 54)

The judge also explicitly rejected the local authority assertion that special guardianship allowance should not be tied to fostering allowance as it included enhancements which would mean the special guardian was in receipt of reward. Rejecting this argument, paragraph 52 states:

“

'The core allowance plus enhancements that forms the maximum special guardianship payment does not contain any element of remuneration. It relates to the core cost of bringing up a fostered child. Following it would not in any way introduce remuneration for special guardians. It would simply reflect the inescapable costs of bringing up a child which, if a special guardian had neither the private means nor the local authority funding to meet them, would stand in the way of a family caring for a child, however much they wished to do so.'

”

<sup>32</sup> As addressed in [paragraph 37 of the Special Guardianship Guidance: Statutory guidance for local authorities 2005](#) (as amended)

<sup>33</sup> See the case of [Suffolk CC v Nottinghamshire CC \[2012\] EWCA Civ 1640](#)

<sup>34</sup> A judicial review is a way of challenging a decision made by a public body. A judge looks at (or 'reviews') whether the public body has acted (or failed to act) lawfully. See FRG's advice sheet [5a\) Judicial review: an introduction](#) for more information.

- [Barrett v Kirklees Metropolitan Borough Council \[2010\] EWHC 467 \(Admin\)](#): The local authority's decision to pay special guardianship allowance to a grandmother (Mrs Barrett) at the rate of two thirds of core fostering allowance 'involved a substantial departure from the relevant ministerial guidance' (see paragraph 29 of the judgment). There had been no justification given for the departure and as such the decision to set the allowance at that level and the associated policy were unlawful. The court noted that 'the more substantial the departure from the policy contained in the Guidance, the more convincing should be the reasons which are advanced in support of that departure.' The court ordered there be a fresh assessment of the special guardianship allowance for Mrs Barrett since 17 March 2006; and an order for the payment of any sums found due
- [R \(TT\) v London Borough of Merton \[2012\] EWHC 2055 \(Admin\)](#): In this case, the local authority had been paying a sum equivalent to two-thirds of their fostering allowance to a special guardian. The court held that local authorities are expected to consider the national minimum allowances for fostering and to use them as a starting point. The court held that local authorities should make adjustments to the level of the allowance that it considered appropriate in order to reflect the differences in the cost to a foster carer and the cost to a special guardian of caring for a child who is not a child born into the household. The decision to adopt a level of allowance for all special guardians of two-thirds was found to be unlawful.

### Learning from kinship foster care allowance case law

In 2001, the High Court handed down in judgment in '[the Manchester case](#)'.<sup>35</sup> This is a [judicial review](#) concerning the legality of the local authority's kinship foster care allowance policy. Under the policy, the local authority was paying short-term kinship foster carers were paid 'at a different and very significantly lower rate than it pays other such foster carers'.<sup>36</sup> The judgment highlighted the public law principles that apply to local authorities as public bodies.<sup>37</sup> And that these apply when a local authority exercises its discretion under the legal framework for financial support for kinship foster carers. The court found the authority's policy discriminated against kinship foster carers. See the box below for an overview of public law principles as summarised in that case.

Public law principles will apply when a local authority exercises its discretion(s) regarding financial rate setting and calculation in respect of special guardianship allowance.<sup>38</sup> Every local authority must exercise their discretion(s) in a lawful manner in the formulation and implementation of their policy on special guardianship allowance. Amongst the things local authorities will need to ensure is that their policy:

- Adequately safeguards the right to respect of family life and avoids discrimination
- Is formulated and exercised in light of the aim(s) of the legal framework. That should include the aim/central principle that '...financial support should be payable in accordance with the Regulations to help secure a suitable special guardianship arrangement where such an arrangement cannot be readily made because of a financial obstacle.'<sup>39</sup>

Applying public law principles as summarised in [L & Ors, R \(on the application of\) v Manchester City Council \[2001\] EWHC 707 \(Admin\)](#). Local authorities must exercise their discretion(s) in a lawful manner in the formulation and implementation of their policy:

- It must be formulated and implemented so that it can be exercised flexibly
- It must be formulated and exercised according to the needs of the children concerned and having regard to its advantages and disadvantages in the individual case
- It must be exercised without reliance on irrelevant considerations
- It must be formulated and exercised without disregard of relevant principles<sup>40</sup>
- It must not be exercised in a perverse manner
- It must be formulated and exercised in the light of the aim of the statutory framework within which it is comprised
- It must not be formulated or exercised so as to conflict with any duties within that framework
- It must be formulated and exercised so as to adequately safeguard the right to respect for family life guaranteed by Article 8 of the European Convention on Human Rights and so as to avoid discrimination in breach of Article 14 (which requires that of the rights and freedoms set out in the Act must be protected and applied without discrimination).

<sup>35</sup> Case reference: [L & Ors, R \(on the application of\) v Manchester City Council \[2001\] EWHC 707 \(Admin\)](#)

<sup>36</sup> See paragraph 2 of the [Manchester judgment](#)

<sup>37</sup> Public law principles mean public bodies must act lawfully, rationally, fairly, and compatibly with the human rights of those affected by their actions

<sup>38</sup> And indeed, in relation to all aspects of the special guardianship financial support legal framework which affords local authorities discretion in one way or another

<sup>39</sup> See paragraph 37 of [The Special Guardianship Guidance: Statutory guidance for local authorities on the Special Guardianship Regulations 2005 \(as amended\)](#).

<sup>40</sup> Including those set out here



### Examples of what key decisions of the Local Government and Social Care Ombudsman (LGSCO) regarding the rate of special guardianship allowance have said:

A number of LGSCO decisions have reminded local authorities of the provisions of relevant statutory guidance and of the clear body of case law regarding special guardianship allowance rates. The decisions have recommended back payments should be made to correct errors and underpayments. The following boxes detail three such decisions:

#### Local Government and Social Care Ombudsman report no 12006209: Liverpool City Council

The complainant in this case was a paternal aunt raising her nephew, first as a kinship foster carer and then as a special guardian. The elements of the complaint included (but were not limited to) that the local authority had:

- Failed to explain in writing what amount of special guardianship allowance it had agreed to pay and how it reached that figure
- Deducted child benefit from that special guardianship allowance when the government advice is not to deduct child benefit from special guardians in receipt of income support
- Paid a rate of special guardianship allowance that was lower than the rate of allowance foster carers receive.

During the Ombudsman's investigation the following came to light:

'4. During the investigation it became apparent that the Council was not paying Special Guardianship Allowance at the same rate as the Fostering Allowance it pays its foster carers which the courts have confirmed it must. It also became apparent that the Council was not paying its foster carers, who care for children between 0 and 4 years old, at a rate at or above the Government's National Minimum Fostering Allowance rate. Approximately 340 other people were affected by the Council's failure to pay the correct Special Guardianship Allowance and Fostering Allowance rate.'

In response to the investigation the local authority accepted:

'36. .... the rate it has used for the calculation of Special Guardianship Allowance was not the same as the rate it paid as Fostering Allowance to its foster carers. It has agreed to pay the same rate as Fostering Allowance and backdate those payments until April 2010, the year of the court case. The Council has estimated this affects 146 people who receive Special Guardianship Allowance.'

And the Ombudsman stated:

'46. I have decided to publish this report as my findings have wider public interest. I ask other councils to take note of the findings in this case regarding children who go to live with friends or other family members (Southwark Judgment), paying foster carers at least the National Minimum Fostering Allowance, and paying rates of Special Guardianship Allowance equivalent to that of their foster carers.'



### Local Government and Social Care Ombudsman report no 17002928: North Tyneside MBC

The complainant in this case was a grandmother (Mrs X) who was special guardian to her two granddaughters. The local authority had wrongly calculated the allowance as a percentage of its fostering allowance applying the following policy from December 2015:

*'The Local Authority maximum payment [of financial support to Special Guardians] is a percentage of the Fostering Allowance based on the child's age, which is at the discretion of the Service Manager.'* The prior policy had similarly been on the basis of calculating special guardianship allowance as a percentage of the local authority's fostering allowance.

In response to the Ombudsman's enquiries, the local authority confirmed:

*'27. ...its policy for special guardianship allowance did not comply with statutory guidance. It had not been able to develop and implement a new policy by December 2016 as it intended. It had still not calculated Mrs X's Special Guardianship allowance using a correct policy.'*

During the investigation, the local authority then identified 171 families who may have not received the correct support.

The new policy (yet to be implemented) was described as providing for maximum payment:

*'...equivalent to the Fostering Allowance based on the child's age, plus any additional enhancement that would be payable to meet any special needs of the child or exceptional circumstances which will require such an enhancement which is at the discretion of the Service Manager. It said this would ensure equivalence between the maximum fostering allowance and the maximum Special Guardianship Order allowance. It did not give a timetable for implementation.'*

The Ombudsman found the local authority were at fault and that injustice had been caused in this case. The Ombudsman's recommendations included that that within three months of the date of their report the local authority:

- Implements the new policy for Special Guardianship allowances and apologises to Mrs X for the delay in implementation
- Identify all existing special guardians that might be affected by the change and write to them to explain the new policy
- Calculates and backdates from November 2013, all special guardianship allowance payments for which Mrs X is eligible
- Identifies all other Special Guardians affected by this fault since November 2013 and
- Makes backdated payments to those Special Guardians, calculated using the correct new policy.

In the Ombudsman's conclusions and in considering the extent of any backdating of special guardianship allowance the report states:

*'34. The Council's policy of Special Guardianship allowance calculation has been incorrect and at fault since 2010. This was when case law established that allowances should not be calculated as a percentage of fostering allowance. Ideally all councils should be aware of such a significant case, review its implications, and amend practices accordingly'*  
.....

*'40. We need to consider what is practical in deciding when is an appropriate time to backdate payments from. The further we go back, the more difficult it is for the Council to draw upon accurate records. 'We also consider it appropriate to consider what is a proportionate remedy to expect the Council to deliver in these circumstances.*

*41. Taking all these factors into account, we believe the publication of our Focus Report in November 2013 marks a clear landmark, rooted in our casework beyond which it is incontrovertible that the Council should have known about this issue and should have acted.*

*42. It is therefore practical, proportionate and reasonable we should ask the Council to remedy injustice to others arising from that time forward.'*





### Local Government and Social Care Ombudsman report no 17010167: Rochdale MBC

In this matter, grandparents complained the local authority 'breached statutory guidance by continuing to base the payment on the fostering allowance rate from 2011, the time the Special Guardianship Order was made'. The rate had not been increased in line with their granddaughter's age, nor consistently in line with rises in the fostering allowance rate. In finding fault causing injustice and making recommendations, the Ombudsman's report states:

'27. While fostering rates have increased over time, and take into account the age of the child, Mr and Mrs B's Special Guardianship Allowance rate has remained static. In practice, of course, this creates an increasingly widening gap between the two allowances. By freezing the support, a considerable and unjustifiable differential emerges between the allowances which effectively leaves families in the same place as in those councils we have already criticised for paying Special Guardianship Allowances as a fixed proportion of fostering rates. We are satisfied Final report 8 Mr and Mrs B have been left with less financial support for their grandchild than would have been the case if they had been treated fairly and without fault.'

The Ombudsman's recommendations included that within three months of the report, the local authority:

- Calculates and backdates to November 2013 (the date of publication of our focus report, [Family Values: Council services to family and friends who care for others' children](#))<sup>41</sup> all Special Guardianship Allowance payments for which Mr and Mrs B are eligible, based on the fostering rate relevant at the time and their grandchild's age
- Reconsiders its policy for Special Guardianship Allowances in light of the statutory guidance, case law and our focus reports
- Identifies all other special guardians affected by this fault since November 2013
- Makes backdated payments to those special guardians, calculated using the reconsidered policy.

In 2019, the local authority sought to challenge the Ombudsman's findings in the High Court. [The High Court concluded that the council's policy was not in line with statutory guidance and principles established in previous court cases.](#)

### **The Ombudsman's overarching messages for local authorities, including councillors, regarding special guardianship allowance**

In 2018, the Local Government and Social Care Ombudsman (LGSCO) published a focus report titled '[Firm Foundations: Complaints about council support and advice for special guardians](#)'. The report stated the LGSCO:

'..found councils who have not set out clear guidance on how they calculate allowances, faulty council policies and a council that failed to pay special guardianship allowance at the same rate it paid fostering allowance as the law requires'<sup>42</sup>

At pages 12 to 13 of the report, the LGSCO recommends local authorities should:

- Review their special guardianship allowance policies to ensure they are not making the same mistakes as have been flagged by the Ombudsman
- Review how they are getting up to date advice on relevant case law
- Review how they use the Ombudsman's focus reports as a source of information
- Publish a clear, simple explanation for how they will calculate any allowance. This includes setting out the factors that will be considered
- Avoid fettering their discretion to reflect the special circumstances of a case when deciding about payment of special guardianship allowance. That is, paying flat rates without appraising the need of the special guardianship arrangement.

<sup>41</sup> This [earlier focus report from the Ombudsman](#) includes clear messages regarding special guardianship allowance rates and payments - see 'Fiona's story' on page 10 of the report and the good practice points on page 12 '*Pay the correct rates in accordance with statutory guidance. Pay special guardians the same rate as foster carers and pay family and friends foster carers any additional allowances that it would have paid to professional foster carers based on the needs of the child*'

<sup>42</sup> Echoing the earlier focus report. Ibid.

## Messages and tools for councillors



In determining the amount of any ongoing financial support, the local authority should have regard to the amount of fostering allowance which would have been payable if the child were fostered. **The local authority's core allowance plus any enhancement that would be payable in respect of the particular child, will make up the maximum payment the local authority could consider paying the family.** Any means test carried out as appropriate to the circumstances would use this maximum payment as a basis. [Page 17, Firm Foundations: Complaints about council support and advice for special guardians](#)

Page 17 of the report also includes a series of key questions for local authority elected members. These are questions the LGSCO suggests members can ask officers when scrutinising children's services in relation to special guardianship. They include:

- How does the council calculate special guardianship allowances?
- Is this in accordance with statutory guidance?
- Are decisions about support to special guardians being made based on the child's needs as opposed to blanket financial constraints?
- What complaints have been made about special guardianship? What are the outcomes and how has the local authority used them to improve its services?

## 7 Paying, reviewing and ceasing financial support: what the law requires

### How should financial support for special guardians be paid?

Local authorities have discretion as to whether financial support is paid by way of regular allowance, as a lump sum, or through an agreement to make payment in instalments. What is appropriate will depend on the precise situation.<sup>43</sup> The special guardianship statutory guidance makes clear that a regular allowance is likely to be appropriate if the financial support 'is provided to meet a need which is likely to give rise to recurring expenditure'.<sup>44</sup>

### How and when should financial support for special guardians be reviewed?

[Regulation 18](#) requires that a local authority providing regular, periodical financial support (an allowance) review this as follows:

- On receipt of the annual statement from the special guardian about their financial circumstances; the financial needs and resources of the child they are raising; their address and whether the child has a home with them<sup>45</sup>
- If the special guardian has failed to let the local authority know of any relevant change in their circumstances
- At any (other) stage in the implementation of the plan that the local authority considers appropriate.

It is however important to view periodical financial support in the context of the whole regime of support services being provided to support a special guardianship arrangement. In particular that:

- [Regulation 17\(2\)\(a\)](#) requires that at the very least annual reviews of support services take place (other than the financial support paid periodically)
- [Paragraph 81 of the special guardianship statutory guidance](#) explains that the purpose of those reviews is to make sure the services provided are **effective** and to identify whether they need to continue.

### What is required of a local authority if they wish to make changes to periodical financial support following review?

If the local authority proposes to reduce or terminate periodical financial support already being provided (or revise the plan) following review, they should not usually just proceed to make those changes. They should first provide the special guardian with an opportunity to 'make representations'. This involves:

- Giving the person notice of the proposed decision and include all the information detailed in [regulation 15\(3\)](#)<sup>46</sup>
- Confirming the amount of time, the person has to make their representations<sup>47</sup>.

The local authority must then decide whether to vary or terminate payments or whether to seek to recover all or part of any financial support already paid (and can suspend the allowance pending the decision). The local authority can also decide whether to revise the plan. To decide that, the authority should have regard to the findings from the financial review and consider any representations.<sup>48</sup>

<sup>43</sup> See [regulation 8 of the Special Guardianship Regulations 2005 \(as amended\)](#)

<sup>44</sup> See [regulation 8](#), and paragraph 44 of [The Special Guardianship Guidance: Statutory guidance for local authorities](#)

<sup>45</sup> This is all required under [regulation 10](#) as referred to in [regulation 18\(8\) of the Special Guardianship Regulations 2005](#)

<sup>46</sup> This is the same information that should be in a notice after a first assessment of financial support needs – see [regulation 18\(7\)](#)

<sup>47</sup> See [regulation 18\(5\)](#)

<sup>48</sup> See [regulation 18\(8\) of the Special Guardianship Regulations 2005 \(as amended\)](#)



### If a change in, or termination of, an allowance is decided upon, what should a special guardian be able to expect of the local authority?

Government regulations say that the local authority **must** give the person:

- Notice of their decision
- Reasons for the decision
- A copy of any revised plan.<sup>49</sup>

### What should special guardians be able to expect of local authorities if a change to periodically paid financial support is the result of the authority reviewing and changing its special guardianship financial policy?

[Regulation 18\(2\)\(c\)](#) provides that a local authority **must review** periodical payments being made to a special guardian 'at any stage in the implementation of the plan that they consider appropriate'.

It seems that [regulation 18\(2\)\(c\)](#) could then cover a situation in which review of periodically paid financial support to an individual special guardian is **precipitated by** a change in the local authority's policy regarding financial support for special guardians by way of periodical payments (allowance). A review under regulation 18(2)(c) would be carried out in line with [regulation 12](#) (concerning the procedure for assessing the need for special guardianship services<sup>0</sup> and [regulation 13](#) (regarding assessing financial need).

If following the review, the local authority proposes to reduce or terminate periodical financial support already being provided (or revise the plan) again, they should not usually just proceed to make those changes. They should first provide the special guardian with an opportunity to 'make representations' as per [regulation 18\(5\)](#). For details of what this involves and other relevant information see [What is required of a local authority if they wish to make changes to periodical financial support following review?](#). If a change or termination of an allowance is subsequently decided upon, see above for details of what a special guardian should be able to expect to receive a notice of the decision, reasons for the decision and copy of any revised plan.<sup>50</sup>

### When must financial support for a special guardian or prospective special guardian end?

This is dealt with in [regulation 9](#). There are four situations to be aware of:

- The child ceases to have a home with them
- The child ceases full-time education or training and commences employment
- The child qualifies for income support or jobseeker's allowance<sup>51</sup> in his or her own right, **or**
- The child attains the age of 18, unless they continue in full-time education or training, when it may continue until the end of the course of training they are then undertaking.

### So, can a special guardian of a child who has turned 18 years old receive financial support, including special guardianship allowance?

The parts of the Special Guardianship Regulations 2005 (as amended) concerning financial support and review of financial support (those in Chapter 2 of the regulations) continue to apply in relation to a young person aged 18 or over if:

- They are in full time education or training; **and**
- Immediately before they reached the age of 18, financial support was payable [under Chapter 2 of the Special Guardianship Regulations 2005 \(as amended\)](#).

It is important that local authorities are clear in their policies and information how they define full time education and training and what evidence of this they require. There is nothing in the legal scheme to suggest that apprenticeships are excluded from the meaning of 'full time education and training'.

<sup>49</sup> See [regulation 18\(9\) of the Special Guardianship Regulations 2005 \(as amended\)](#)

<sup>50</sup> Ibid

<sup>51</sup> In the past few years, there have been changes to the welfare benefits system. Income support and jobseeker's allowance (along with several other benefits) have now been replaced by universal credit. These old types of benefits are known as legacy benefits. The Department for Work and Pensions will not move existing claimants of the above benefits over to universal credit until 2022 or later. But if someone has a relevant change in circumstance, then their legacy benefits may stop, and they may need to claim universal credit. See FRG's advice sheet [2h\) Welfare benefits for kinship carers](#) for more information.



## Can a local authority commit, at the point that an order is made, to regular payments by way of allowance being made until the child reaches 18?

There is no explicit impediment within the special guardianship legal scheme itself to a local authority indicating that it anticipates an allowance will continue to be payable until a child is 18.

A local authority could, for example, feel that based on what is already known about the child's likely future needs, there is a strong likelihood ongoing financial support will be required. However, the requirement to review special guardianship support services at least annually remains.<sup>52</sup> As does the separate requirement to review periodical financial support (allowance) in line with the regulations.<sup>53</sup> There is nothing in the legal scheme that suggests these requirements can be circumvented. Thus, in making such a forecast the local authority will be likely to say this will be subject to any changes discerned in the process of regular review required under the regulations.

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## Further information

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Caroline Lynch, Principal Legal Adviser, Family Rights Group [clynch@frg.org.uk](mailto:clynch@frg.org.uk)

Visit the [advice section of Family Rights Group's website](#) for more information and advice concerning [kinship care, including special guardianship](#).

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<sup>52</sup> See [regulation 17\(2\)\(a\) of the Special Guardianship Regulations 2005 \(as amended\)](#)

<sup>53</sup> See [regulation 18 of the Special Guardianship Regulations 2005 \(as amended\)](#)