



Policy Briefing Special Guardianship Orders and Leaving Care Services

Introduction

Although the special guardianship legislation has only been in force since 30th December 2005, there has already been wide variation in the way that local authorities have applied the provisions governing leaving-care services for former looked-after young people subject to special guardianship orders (SGOs). This is particularly the case in respect of two questions:

1. age of eligibility—can the special guardianship order have been made when the young person is any age or must it have been made after they reached 16 in order for the young person subject to an SGO to be eligible for leaving-care services? and
2. level of services—are they entitled to services as young people qualifying for advice and assistance or as former relevant children?

A recent research study of SGOs made during the year (2006) after they came into existence (A. Hall, *Special Guardianship and permanency planning: a missed opportunity?* MA dissertation 2007) found that few non-kinship foster carers applied for SGOs during that time, despite the expectation that this would be a likely category of applicant. Based on our experience, we think that the lack of clear local-authority policies about what financial support and what leaving-care services they will provide have contributed to the lack of interest by this group of foster carers. This briefing is written to assist in the development of appropriate and clear policies.

In recent correspondence between NLCAS, BAAF and DCSF (Mark Burrows, Team Manager--Care Planning, Children in Care Division), it was agreed that the legislation is clear that the level of services for which a former looked-after young person subject to a SGO must be considered is that of "persons qualifying for advice and assistance" under section 24, although local authorities have the power to provide a higher level of service.

It was also agreed that the language of the statute (as supported by the Explanatory Notes to the Bill and the Act) requires that young people subject to an SGO must have reached the age of 16 before they can be considered for leaving-care services **not** that they must have reached the age of 16 when the SGO was made in order to be considered for leaving-care services. The SGO can have been made at any age, as long as the young person was looked after immediately before the SGO was made.

The rest of this briefing contains the relevant provisions of: the Children Act 1989, as amended by the Adoption and Children Act 2002; the Special Guardianship Guidance and Regulations 2005; and the Explanatory Notes to the Adoption and Children Bill and Act. The briefing also summarises the law in respect of entitlement to special guardianship support services, and concludes with a list of relevant documents for further information.

Entitlement to leaving care services

Children who were looked after by a local authority *immediately* before the making of a special guardianship order may qualify for aftercare advice and assistance under section 24(1A) of the Children Act 1989 (the Act). This section applies to a person:

- (a) who has reached the age of sixteen but not the age of twenty-one;
- (b) with respect to whom a special guardianship order in force with respect (or, if he has reached the age of eighteen, was in force when he reached that age); and
- (c) who was, immediately before the making of that order, looked after by a local authority.

The nature of the advice and assistance is the same as for any other young person qualifying for advice and assistance under section 24. According to the Special Guardianship Guidance, paragraph 21: "The relevant local authority should make arrangements for children who meet these criteria to receive advice and assistance in the same way as for any other child who qualifies for advice and assistance under the Act, as amended."

Regulation 22 of the Special Guardianship Regulations 2005 specifies that the relevant local authority responsible for providing the advice and assistance is the one that last looked after the young person. The Guidance (paragraph 97) suggests, however, that it may make more sense for the young person to seek help locally for certain services, such as health care.

Explanatory Notes to the Adoption and Children Bill and Act

- The Explanatory Notes to the Adoption & Children Bill, as presented to the House of Commons on 15th March 2001, said at paragraph 217 the following about special guardianship and leaving-care services:

"Subsections (5) to (7) amend the provisions added to the Children Act 1989 by the Children (Leaving Care) Act 2000 to place a duty on local authorities to consider whether to provide advice and assistance to former looked-after children aged between 16 and 21 subject to special guardianship orders, including support for employment, education and training. The Government intends to make additions during the passage of the Bill to provide for support arrangements for children subject to special guardianship orders and their special guardians."

- The Explanatory Notes to the Adoption And Children Act 2002* contain paragraph 285 about special guardianship and leaving-care services:

“Further provision about special guardianship is made in Schedule 3. Schedule 3 amends the provisions added to the Children Act 1989 by the Children (Leaving Care) Act 2000 to place a duty on local authorities to consider whether to provide advice and assistance to former looked-after children aged between 16 and 21 subject to special guardianship orders, including support for employment, education and training. Where the authority determines the child is in need of advice and assistance that the special guardian cannot give him, the authority is placed under a duty to advise and befriend him and may also provide him with assistance, for example in respect of education and training.”

*The Introduction to the Explanatory Notes explains the purpose and proper usage of the Notes:

“1. These explanatory notes relate to the Adoption and Children Act 2002 which received Royal Assent on 7th November 2002. They have been prepared by the Department of Health in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.”

Entitlement to special guardianship support services

Local authorities are required to make arrangements for the provision of special guardianship support service, including counselling, advice and information, and such other services (including financial support and therapeutic services) as specified in the Regulations. Provision is made for assessment of need, planning and review of services. According to A. Hall 2007 at page 58 (see above), services provided in some case have been ‘significant’, including home improvements and university expenses.

The relevant local authority for the first three years after the making of the order is the local authority that last looked after the young person. Thereafter, the local authority where the special guardian lives is responsible.

Relevant documents

- Children Act 1989, as amended by the section 115 and Schedule 3, paragraph 60, of the Adoption and Children Act 2002
- Explanatory Notes to the Adoption and Children Bill and Act
- The Special Guardianship (England) Regulations 2005 (in force 30.12.05), and
- Special Guardianship Guidance, both found at <http://www.everychildmatters.gov.uk/files/297B7E71D85A3A61A538913960FB43BF.pdf>

December 2007