

SPECIAL GUARDIANSHIP ORDERS

What does Special Guardianship mean?

Special Guardianship is a term used to describe the person who takes on the role of the child's main carer, when the child cannot live with their birth parents. Quite frequently grandparents or other family members apply to be special guardians of their grandchildren, or family members, who are already living with them, to formalise the child's living arrangements.

What is a Special Guardianship Order?

Special Guardianship Orders are private law orders which give the "special guardian" parental responsibility for the child concerned. They provide permanence and security for those children for whom adoption is not suitable, but who cannot live with their birth parents. The basic legal links between the child and his birth family remain, but the special guardian is entitled to exercise their parental responsibility to the exclusion of any other person with parental responsibility, e.g. the child's birth parents.

Who can apply for a Special Guardianship order?

The following can apply to the court for a Special Guardianship Order:

A person who has a residence order in their favour.

Either party to marriage.

Any civil partner in a civil partnership in relation to who child is a child of the family.

A person with whom the child has lived for 3 of the last 5 years and within the preceding 3 months.

A person with the consent of those with parental responsibility.

Any person with permission

Foster parents with whom the child has lived for one year before application.

N.B. A parent cannot apply for a Special Guardianship Order.

How do I apply for a Special Guardianship order?

You will need to fill out C1 and C13A forms, as well as the Form FM1 f and file these with the court. These forms can be downloaded from www.justice.gov.uk, or alternatively you can pick them up from your local county court. It currently costs £160 to apply to the Court for a Special Guardianship Order; you may be eligible for help with court fees if you are on benefits or on a low income. Further, if a Local Authority is supporting your application, they may agree to pay the fee on your behalf.

Once you have completed the forms, you will need to file three copies of them with the Court, as well as payment of the court fee by cheque, postal order or cash.

What happens once I have made the application for a Special Guardianship Order?

The Court will write to you (the Applicant) and the child's parents (the Respondents) with a date and time to come to Court. The letter will include a "notice of proceedings", which tells you when and where to come to Court. It is always helpful to come to court at least 30 minutes before the time of the hearing to enable you to have discussions the Respondents or their legal representatives before going into Court.

The first hearing is a directions hearing and at this hearing the Court will usually direct that the Local Authority file and serve a Special Guardianship Report prior to the next court hearing. This is legal requirement that the Local Authority must comply with and comprises a lengthy document considering the various criteria for making a Special Guardianship Order and will recommend whether or not an order should be made.

What benefits are there to having a Special Guardianship Order?

Your role as the child's carer is clearly defined.

You are able to exercise your parental responsibility to the exclusion of others, for example if there is unreasonable disagreement with the parents about the choice of school for the child, then you are able to choose the school that the child should attend, or if the birth parents suffer from mental health or alcohol dependency and are not always in a fit state to have contact with their child, you will be able to decline contact on those occasions to protect the child.

You are able to remove the child from the jurisdiction (take them abroad) for up to three months without the consent of others who have parental responsibility.

Members of the family team at 12 College Place understand how difficult it can be for someone without legal training to navigate their way round the legal system. We all specialise in family law and have lots of experience of helping our clients make the right decisions about these complex issues. We can discuss your case with you, talk through the options, and guide you through your court case. Remember: we are here to help.