

Special guardianship - A guide for court users

Who is this leaflet for?

This leaflet is intended for anyone who is thinking of applying for a Special Guardianship Order.

This leaflet will explain:

- What Special Guardianship is
- Why it is different from adoption
- Who can apply to be a Special Guardian
- How to make the application

To get advice about applying to become a Special Guardian contact your local authority who can give you information and advice about the procedures that apply. You can also get advice from a solicitor, a Citizen's Advice Bureau or a legal advice centre or law centre or go to www.ecm.gov.uk/adoption or www.citizensadvice.org.uk.

For free legal information, help and advice contact Community Legal Service Direct on 0845 345 4345 or www.clsdirect.org.uk.

What is Special Guardianship?

A Special Guardianship Order appoints one or more people as Special Guardian(s) of a child. It lasts until the child is 18 (unless changed or cancelled before then). The Special Guardian has parental responsibility for the child and can take most decisions about the child (such as where the child will live or go to school) without having to consult anyone else. (Parental responsibility is explained in Leaflet CB1 'Children and the Family Courts' which is available from your local court or from our website www.hmcourts-service.gov.uk). The Special Guardian cannot change the child's surname or take him or her abroad for more than three months without the agreement of anyone else with parental responsibility or the permission of the court.

Why is it different from adoption?

When a child is adopted he or she becomes part of their 'new' adoptive family and all legal ties with their birth family are severed. The natural parents lose their parental responsibility and the adoption order cannot (except in extremely rare situations) be varied or discharged. Adoption may not always be the most suitable solution for some children who may, perhaps because of their age or cultural background, not wish to be adopted but would benefit from a permanent, legally secure placement with a long term carer other than their parent. Special Guardianship can meet these needs. Unlike an adoption, children subject to a Special Guardianship Order retain ties with their birth family, although the family's rights and responsibilities are reduced.

Who can apply to be a Special Guardian?

- A child's guardian (someone who has been appointed to look after the child when there is no parent or other person with parental responsibility). (A solicitor or the Citizen's Advice Bureau can give advice about whether a person is a guardian of the child for the purposes of making the application.)
- A person in whose favour a residence order is in force under section 8 of the Children Act 1989.
- A person with whom the child has lived for 3 out of the last 5 years.
- A person who has the agreement of anyone who has a residence order in respect of the child.
- A person who has the agreement of the local authority if the child is in care.
- A person who has the agreement of all the people with parental responsibility for the child.
- A local authority foster parent or relative with whom the child has been living for at least one year preceding the application.
- Anyone who has the court's permission to make the application.

Applicants must be over 18 years of age and **cannot** be a parent of the child. Applications can be made jointly by more than one person.

Are there things I must do before I make the application?

Three months before you make the application you must inform the local authority that you plan to apply. If the child is in the care of or looked after by a local authority, you must give notice to the local authority responsible for the child, otherwise, it should be the local authority where you live.

The local authority has to write a report for the court to help it decide what order to make. The court cannot make the order without this report.

What will I need to make the application?

You will need form C1 (or form C2 if you are asking for permission to make the application, or making the application in existing proceedings concerning the child) and form C13A, which you can get from the court or from our website www.hmcourts-service.gov.uk.

Will I have to pay a fee?

A fee is payable for Special Guardianship applications. Please ask the court staff for details or for a copy of the leaflet EX50 - Civil and Family Court Fees. It is also available from our website www.hmcourts-service.gov.uk.

Your financial situation may mean you do not have to pay a court fee, for example, if you are in receipt of a particular means tested benefit or you would suffer financial hardship if you pay the fee. The combined booklet EX160A - Court Fees, do I have to pay them? gives you more information. This is available from the court or our website www.hmcourts-service.gov.uk.

If you are making your application to a Family Proceedings Court, the arrangements for helping with fees if you are on a particular means tested benefit or would suffer financial hardship are different. You should contact the court where you wish to make your application for more information.

Where do I start my application?

If there is already an order under the Children Act 1989 in respect of the child whose Special Guardian you wish to become, you must start your application in the court that made the earlier order, if that order will be varied or discharged when your application is dealt with.

In all other cases you can start your application in:

- A Family Proceedings Court (magistrates' court)
- A County Court
- The High Court

The addresses and telephone numbers are listed in the telephone directory and Yellow Pages under Courts or can be found under court information and addresses on our website www.hmcourts-service.gov.uk.

What do I do when the application has been started?

When the court has issued your application, you will be given a case number and a date will be fixed for a first directions hearing (see below). You will need to send copies of your application form and the details of the date of the first directions hearing to the other parties in the proceedings. This is called 'Serving the forms' and you will find information about this in leaflet CB3 - 'Serving the forms Children Act 1989', available from the court or from our website www.hmcourts-service.gov.uk.

The respondents to the application will be:

- Everyone who you believe has parental responsibility for the child;
- If a care order is in force, everyone you believe to have had parental responsibility before the care order was made;
- If a care order is in force, the child (the court will appoint a Children's Guardian to represent the child in these cases and the documents will need to be sent to this person).

Other people you must notify will be:

- The social services department of the local authority if the child is in local authority accommodation.
- If the child is not in local authority accommodation, the social services department of the local authority where you live.
- Everyone who is caring for the child.
- The person who provides the home in which the child is staying if the home is a registered children's home or a voluntary home and it is a refuge.
- Everyone with whom the child has lived for at least 3 years prior to the application.
- If there is a court order in force which concerns the child and it may be affected by your application, you should notify everyone named in that order.
- If there are court proceedings concerning the child already taking place and they may be affected by your application, you should notify all the parties to those proceedings.

Can I keep my details confidential?

If you do not wish to disclose your address to the parent(s) or guardian(s) of the child whose Special Guardian you wish to become, you can omit it from the form. Instead you should give these details on form C8 which you should attach to your application. The court will then keep your address details private and they will not be disclosed to anyone without the permission of the court.

When the local authority's report is filed with the court, the court will consider whether to disclose it to each party to the proceedings. Before deciding, the court will consider whether any information should be deleted including any information which discloses addresses or confidential information. The court may also direct that the report may not be disclosed to a party.

What is a first directions hearing?

A first directions hearing is an appointment at which the court will consider the proceedings and make decisions (directions) about how the application is to proceed. This may include deciding about timetables for filing of reports and evidence, whether the child should be made a party, the benefits of using mediation or alternative dispute resolution, whether the case should be transferred to a higher court, whether a further directions appointment is necessary and if possible the date and place of the final hearing.

A copy of the order explaining what directions the court has made will be sent to you or your solicitor if you have one. Unless the court excuses you, you will need to attend any hearing. If you are unable to attend you will need to speak to the court office.

What happens next?

Once all the directions made by the court have been carried out, the case can move on to a final hearing. At this hearing the court will decide whether to make the Special Guardianship order, having read all the reports and statements and heard evidence from the parties and any other witnesses. A copy of the final order will be sent out to all parties.