

Information leaflet

A special guardian's rights and responsibilities

Special guardians can make all the important decisions about the child they are caring for until they reach 18 years old. They share parental responsibility with the child's birth parents but can make almost all decisions without their agreement.

It is up to the special guardian how much information and involvement they allow birth parents to have and this will be dependant on their relationship with them. As the child's primary carer final decisions remain with them.

What decisions can't a special guardian make on behalf of the child?

As mentioned above, special guardians share parental responsibility with the child's birth parents but are able to make nearly all decisions about the child without the birth parents' consent or even knowledge.

As the child's primary carer they are responsible for all aspects of their wellbeing. They are expected to provide a home for them, protect and care for them, choose their school and ensure they receive appropriate medical or dental treatment including immunisations.

There are a limited number of areas where special guardians are required to obtain permission from the child's birth parents. They include:

- taking the child out of the country for longer than three months
- changing the child's surname
- changing the child's religion
- situations where consent from everyone with parental responsibility is required by law such as sterilisation of the child
- placing the child for adoption.

If a special guardian is considering any of the steps outlined above they must ensure they obtain the birth parents' consent or permission from the court prior to carrying them out.

What are special guardian's legal rights around birth family contact?

Contact arrangements can be clearly outlined for some special guardians as part of their SGO agreement while others are expected to make informal arrangements themselves. Contact should always be decided on the basis of what is in the child's best interests.

The court can order contact between a child and their birth family even if the carer thinks it is not in the child's best interests. If this decision is made the special guardian must ensure contact takes place. However, if they are able to provide evidence that contact is causing distress and is affecting the child negatively they can challenge this in court. While it is important for special guardians to encourage contact they cannot force the child to attend. If contact arrangements have not been fixed in a court order special guardians have the authority to decide them.

A birth parent can challenge contact arrangements by applying to the court and allowing them to decide about the disagreement. The court's main concern will be the child's welfare and contact will only be changed if it is in the child's best interests. If applications happen repeatedly and unreasonably the court can stop them.

There are options available to resolve disputes regarding contact before disagreements escalate to court. Birth parents and special guardians can attempt to resolve their problems by asking a social worker to intervene or by attending family mediation or similar services. In fact a court may order a special guardian to seek mediation before allowing them to take legal proceedings as these are usually viewed as a last resort.

If a special guardian decides to make major changes to the contact agreement, such as allowing unsupervised contact when the child is older, they should seek advice from the local authority prior to making any changes.

If during contact a special guardian is concerned about the child's safety, they must contact the local authority and stop contact until those concerns have been addressed and they feel the child is safe.

Under what circumstances can an SGO end?

There must be a significant change in circumstances for a court to end a SGO. The legal process is potentially lengthy and expensive and it is relatively rare for a challenge from parents or relatives to actually go ahead.

An application to court to end an SGO can be made by the special guardian, anyone who has had a Child Arrangements Order put in place since the SGO was granted or by the local authority where a Care Order has been put in place since the SGO was granted.

A child's parent, step-parent who has parental responsibility or anyone who previously had parental responsibility prior to the SGO being granted must first apply to the court for permission to apply for a change or ending of the SGO.

A SGO can also end on the death of a special guardian unless the order was made jointly with another special guardian and one survives. Special guardians can appoint in their will a testamentary guardian who will look after the child in the event of their death. Testamentary guardians have an equal amount of parental responsibility to birth parents so it is not the same as being a special guardian. All disagreements between testamentary guardians and birth parents, including about where the child lives, will need to be resolved in court. Testamentary guardians are also not entitled to the same support services as special guardians but can apply to children's services in the same way as any parent can.

Key points

- Special guardians can make almost all of the important decisions about the child without the birth parents' agreement.
- Contact should always be decided on the basis of what is in the child's best interests.
- A SGO can be ended if there is a significant change in circumstances.
- Special guardians should consider including a testamentary guardian in their will who will continue to care for the child if they were to die.

Useful links

Coram Children's Legal centre

www.childrenslegalcentre.com

Helpline 0300 330 5480

Coram Children's Legal Centre (CCLC) specialises in law and policy affecting children and young people. Lawyers and professionals, with experience in child law give free legal information, advice and representation to children, young people, their families, carers and professionals.

National Family Mediation (NFM)

www.nfm.org.uk

Tel: 0300 4000 636

NFM delivers family mediation through affiliated members in over 500 locations across England and Wales. Their website explains how mediation works and provides a local service finder.

Family Mediation council

www.familymediationcouncil.org.uk

The Family Mediation Council promotes best practice in family mediation to ensure families can confidently access high quality mediation services. Its website provides detailed information about the practicalities of mediation and also offers a local service finder.

Family Action Head Office 24 Angel Gate, City Road, London, EC1V 2PT

T: 020 7254 6251 F: 020 7249 5443 info@family-action.org.uk www.family-action.org.uk

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