

Information leaflet

Your legal rights and responsibilities

As a special guardian, you can make all the important decisions about the child you are caring for until they reach 18 years-old. You share parental responsibility with the child's birth parents but you can make almost all decision without their agreement.

It is up to you how much information and involvement you allow birth parents to have and this will be dependent on your relationship with them. As the child's primary carer final decisions remain with you.

Once you are granted a Special Guardianship Order (SGO) any other court orders that might have been in place end. You will only be treated as a special guardian going forward.

What decisions can't I make on behalf of my child?

As mentioned 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 you are responsible for all aspects of their wellbeing. You 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 you 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
- Situation where consent from everyone with parental responsibility is required by law such as sterilisation of the child
- Placing the child for adoption

If you are considering any of the steps above you must ensure you have the birth parents' consent or permission from the court.

What are my 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 you think it is not in their best interest. If this decision is made you must ensure contact takes place. However, if you are able to provide evidence that contact is causing distress and is affecting your child negatively you can challenge this in court. While it is important for you to encourage contact you cannot force your child to attend. If contact arrangements have not been fixed in a court order you have the authority to decide them yourself.

A birth parent can challenge your 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 you to seek mediation before allowing you to take legal proceedings as this is viewed as a last resort.

If you decide to make major changes to your contact agreement, such as allowing unsupervised contact when the child is older, you should seek advice from your local authority.

If during contact you are concerned about your child's safety, you must contact your local authority and stop contact until those concerns have been addressed and you 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 a Child Arrangement Order put in place since the SGO was granted or by the local authority where the Care Order has been put in place since the SGO was granted.

A child's parents, step-parent who had 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
- Once you are granted a SGO any other order that might have been in place ends
- Contact should always be decided on the basis of what is in the child's best interests
- An SGO can be ended if there's 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

Tel: 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

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 the 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

Registered as a Charity in England & Wales no: 264713. Registered as a Charity in the Isle of Man no: 1206.

Registered Company Limited by Guarantee in England and Wales: 01068186.

Patron: Her Majesty the Queen. Chair: Bryan Portman MBA FCCA FCIS. Chief Executive: David Holmes CBE.

Vice Patrons: Christine Davies CBE. Dr Andrew McCulloch. Dame Denise Platt DBE. Katie Vanneck-Smith. Professor Harriet Ward CBE.