



Special guardianship

A guide for family court users

Who is this leaflet for?

This leaflet is 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; and
- how to make the application.

To get advice about applying to become a special guardian, contact your local authority. You can also get advice from a solicitor, a citizens advice bureau or a legal advice centre.

You may be able to get free legal advice. For more information, go online to www.gov.uk/legal-aid

What is special guardianship?

A special guardianship order appoints one or more people as special guardians of a child. The order lasts until the child is 18 (unless it is 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. (We explain parental responsibility in leaflet '*CB1 Children and the family courts*' which you can get from any family court office or online from hmctsformfinder.justice.gov.uk) The special guardian cannot change the child's surname or take them 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 cut. The natural parents lose their parental responsibility and the adoption order cannot, except in extremely rare situations, be varied (changed) or discharged (ended). Adoption may not always be the most suitable solution for some children. They may, perhaps because of their age or cultural background, not want 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 who are the subject of a special guardianship order keep ties with their birth family, although the family's rights and responsibilities are reduced.

Who can apply to be a special guardian?

The following people 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 citizens advice bureau can give advice about whether a person is a guardian of the child for the purposes of making the application.)
- A person who the child concerned lives with because of a child arrangements order under section 8 of the Children Act 1989.
- A person the child has lived with for three out of the last five years.
- A person who has the agreement of anyone the child lives with and who has a child arrangements order for that 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 the child has been living with for at least one year before the application is made.
- Anyone who has the court's permission to make the application.

You must be aged over 18 to apply and cannot be a parent of the child. You can make a joint application (with more than one person).

Sorting out your arrangements without going to court

Family mediation is one way of settling differences during and after separation or divorce. A trained mediator will help you and your ex-partner to agree arrangements for looking after your children. A mediator is a qualified independent person who will not take sides or try to get you back together.

Mediation can help you and your ex-partner together to agree arrangements for your children by talking things through. A mediator will not tell you what to do but can help you and the other parent to make agreements that are best for your children.

Family mediation can be quicker, cheaper and easier than the stress of going to court

The court will require you to either have been to a mediation information and assessment meeting (a MIAM), or to show why you do not have to go to a meeting, before applying for a court order. If you are eligible you can receive legal aid for the MIAM and for any family mediation sessions you decide to take part in. If at least one parent is eligible for legal aid for mediation, the Legal Aid Agency will pay the cost of the MIAM for both parents (but will only pay for any mediation sessions for the eligible parent). For more information, visit www.gov.uk/looking-after-children-divorce

If you apply for a court order, the court will require you to have attended a mediation information and assessment meeting first to consider with the mediator and the other parent whether mediation might be a suitable way to settle the dispute. The court will also require your ex-partner to attend that meeting if the mediator has asked them to. You or the other parent can ask to see the mediator separately if you would prefer to do this.

What happens at mediation? A trained mediator helps you and the other person to talk about the things you cannot agree on. The mediator will help you both see if there is any way that you could agree with each other. Not all cases are suitable for mediation, especially where there has been violence in the relationship or there are other serious welfare concerns. The mediator will be able to help you decide if your circumstances are suitable for mediation and will not start mediation if they think it is not appropriate. Anything you talk about during mediation will usually stay private and will not be reported to the court unless issues of child protection or alleged criminal offences are raised.

There is a fee for mediation but you may be able to get legal aid to help pay for it. For more information, visit www.gov.uk/legal-aid

If you decide that you still want to go to court after this, you will need to fill in an *FM1* form to show that you have considered mediation. If you do not have to consider mediation, you or your solicitor (if you have one) need to sign Part 1. You may need to provide evidence of why you do not have to consider mediation, and this is explained on the form. If you attended a mediation information and assessment meeting, both you and the mediator need to sign Part 2 of the form. You and the mediator should also sign the form if you did not attend a mediation meeting because the mediator agreed that your case was not suitable for mediation.

You can get form FM1 from the court or by using the our online form finder at hmctscourtfinder.justice.gov.uk/HMCTS/FormFinder.do

To find your nearest family mediator you can go to: www.familymediationhelpline.co.uk/find-service.php

Are there things I must do before I apply?

Three months before you make the application you must tell 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 tell 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 apply?

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 any family court office or online from hmctsformfinder.justice.gov.uk

Will I have to pay a fee?

You may have to pay a court fee. For more information on court fees, please refer to booklet *EX50 Civil and Family Court fees*. This booklet is available from any family court office, or from our website at hmctsformfinder.justice.gov.uk

Your financial situation may mean you do not have to pay a court fee, for example, if you receive a particular means-tested benefit or you would suffer financial hardship if you pay the fee. The combined leaflet and form *EX160A Court and Tribunal fees - Do I have to pay them?* gives you more information. You can get this from any family court office or online from hmctsformfinder.justice.gov.uk

Where do I start my application?

You should make your application to the nearest family court that deals with children's matters.

You can find the full list of courts and information about what type of work they do, online at courttribunalfinder.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 people 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*', which you can get from any family court office or online from hmctsformfinder.justice.gov.uk

The 'respondents' to the application (people you have to tell) 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; and
- if a care order is in force, the court will appoint a children's guardian to represent the child in these cases, and the person applying will need to send the documents to this guardian.

Other people you must tell 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 the child has lived with for at least three years before you make the application;
- if there is a court order in force which concerns the child and it may be affected by your application, you should tell everyone named in that order; and
- if there are court proceedings concerning the child already taking place and they may be affected by your application, you should tell all the people involved in those proceedings.

Can I keep my details confidential?

If you do not want to give your address to the parents or guardians of the child whose special guardian you want to become, you can leave it off the form. Instead you should give these details on form C8 which you should attach to your application. The court staff will then keep your address details private and they will not give them to anyone without the permission of the court.

You can get a copy of form C8 from any family court or from our website at hmctsformfinder.justice.gov.uk

When the local authority's report is filed with the court, the court will consider whether to make it available to each person involved in the proceedings. Before deciding, the court will consider whether any information should be deleted, including any information which reveals addresses or confidential information. The court may also direct that the report may not be given to a particular person involved in the proceedings.

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 go ahead. This may include:

- deciding about timetables for filing reports and evidence;
- whether the child should take part in future hearings;
- the benefits of using mediation or other dispute resolution methods;
- 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.

The court will send you, or your solicitor if you have one, a copy of the order explaining what directions they have made. Unless the court excuses you, you will need to go to any hearing. If you are unable to go 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 everyone involved and any other witnesses. The court will send a copy of the final order to everyone involved.

