

# Special Guardianship: what does it mean for birth parents?

## Introduction

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Sometimes circumstances arise in which children are not able to live with their parents and have to be cared for by someone else - it may be a relative or friend or it could be a foster carer who works for the Council. These arrangements may be for a short or long period, and may be made by the parents and the new carer directly or a social worker may be involved.

If there is a plan for your child to live with someone else for a long time, the arrangement may be secured legally by a court order. This could be achieved by:

- A Child Arrangements Order (saying who the child should live with) - you can get more information about what this means if you call Family Rights Group (FRG) advice service (contact details in Part 4 of this advice sheet); or
- A Special Guardianship Order (SGO) if the arrangement is likely to continue until your child is 18 and the new carer is not your child's other parent.

The key differences between these two orders and other relevant legal options for children living away from their parents can be found in Appendix 1.

This advice sheet sets out the key features of a special guardianship order and explains how it may affect your position as a birth parent. It is quite long so we have divided it into sections to make it easier to read:

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- Part 1: gives basic information about special guardianship (page 4)
- Part 2: gives information about special guardianship order and the court process (page 8)
- Part 3: gives information about getting help from Children’s Services when a special guardianship order exists (page 16)
- Part 4: suggests where you can go for more information (page 20).

Since things can seem quite complicated when Children’s Services are involved with your family, you may want to ask a friend or your solicitor to explain anything in the advice sheet that you don’t understand. You can also talk to Family Rights Group advisers on our advice line – you can find FRG advice line contact details in Part 4 of this advice sheet.

We have included the legal and practice requirements in endnotes at the end of the advice sheet. For full details of all the documents referred to in the endnotes, see the References section at the end of the advice sheet.

**Note: “Social services” are now known as “Children’s Services”. This is how they are referred to throughout this advice sheet.**

Key terms used in this advice sheet include:

**Parental responsibility:** parental responsibility means the legal right to make decisions about how a child is raised. Those with parental responsibility include:

- Mothers
- Fathers who have been married to the mother at any time since the birth of the child; or who are jointly registered on the birth certificate as the father after 1.12.03; or have acquired PR by formal agreement with the mother or by court order
- Anyone who has a Residence/Child Arrangements Order saying the child should live with them, a Special Guardianship Order or an Adoption Order in their favour on the child

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- Testamentary guardians (i.e. a person who is appointed to care for a child after the death of a parent who has parental responsibility or the death of a special guardian)
- Step-parents who have acquired PR by formal agreement or court order.

For more information about parental responsibility, see FRG advice sheet Parental Responsibility: <http://www.frg.org.uk/need-help-or-advice/our-advice-service/advice-sheets>

**Looked after:** Your child is "*looked after*" if they are being cared for by Children's Services, away from home. This will either be:

- With your agreement, or the agreement of your child's other parent or anyone else with parental responsibility or the agreement of the child themselves if they are aged 16 or 17. This is known as 'accommodation'; or
- Under a court order such as a Care Order or Emergency Protection Order. This is known as 'in care'.

When your child is *looked after*, they may be placed with the other parent, someone else who has parental responsibility, relatives or friends, unrelated foster carers or in a residential unit. Planning and review meetings will be held regularly and parents should be consulted about all decisions when their child is *looked after*. For more information about what Children's Services must do when a child is *looked after* see FRG advice sheet on Powers and Duties of Children's Services when children are in the care system: <http://www.frg.org.uk/need-help-or-advice/our-advice-service/advice-sheets>

**Child Arrangements Order (saying who the child should live with):** This is an order of the court which sets out who the child should live with – previously known as a Residence Order. From April 2014, these orders replaced Residence Orders. Also, at the same time, Contact Orders were replaced by Child Arrangements Orders (saying who the child should spend time with).

## **PART 1: BASIC INFORMATION ABOUT SPECIAL GUARDIANSHIP ORDERS**

### **What is a Special Guardianship Order (SGO)?**

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A SGO is a court order which:

- Says that a child will live with someone who is not their parent on a long term basis; and
- Gives parental responsibility to that person.

A Special Guardianship order is similar to a Child Arrangements Order (saying who the child should live with) although it is a stronger order. The key difference for parents is you cannot apply to discharge (end) a SGO unless the court gives you permission to make the application.

A Special Guardianship Order is seen as being less permanent than an Adoption Order because it does not end your legal relationship with your child as adoption does. This means that if your child is under a special guardianship order, they will remain a member of your family even though they are living with the special guardian on a long term basis.

### **When may the court make a Special Guardianship order?**

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The court may make a special guardianship order if your child is going to live with someone else who is not their other parent on a long term basis. This might arise:

- If you have made an arrangement directly with the new carer that they will look after your child. For example you may have made arrangements for a member of your family to look after your child because you have a long term family difficulty and you would prefer your child to stay within the family rather than having to go into the care system; or
- If your child is living with a foster carer and there is no plan for them to return home. If the foster carer is a member of your family or a close friend who is approved by the council to be a foster carer for your child, they may apply for a Special Guardianship order.

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## What is the effect of a Special Guardianship order?

A Special Guardianship order says that:

- Your child will live with the new carer until they reach 18 unless the order is ended earlier.
- As a parent, you keep your parental responsibility even if a special guardianship order is made - see introduction for what parental responsibility means and who else has it. Your legal relationship with your child also continues throughout the time the order exists. However
- The special guardian also gets parental responsibility for your child and they have the right to make specific decisions about your child without having to ask you or anyone else with parental responsibility what you think.<sup>1</sup> This means that they can make all the major decisions about your child's upbringing and they **do not have to ask you if you agree**. But there are some things they are not allowed to do or decide on their own. These are:
  - They cannot change your child's surname, or take them outside the UK for a period of more than 3 months, without the agreement of everyone with parental responsibility or the permission of the court.<sup>2</sup> For further information on who has parental responsibility see FRG advice sheet on 'Parental responsibility': <http://www.frg.org.uk/need-help-or-advice/our-advice-service/advice-sheets>
  - No other person may take him/her outside the UK **for any period** without either the written consent of every person who has parental responsibility for the child or the permission of the court.
  - They cannot override your rights as a parent about any plan for your child to be adopted, so for example they could not agree to your child being placed for adoption. You would be asked about this by the social worker directly.<sup>3</sup>
- The special guardian may appoint a testamentary guardian to look after your child if they die before your child reaches 18.<sup>4</sup> This is someone who will have parental responsibility for your child, but on an equal basis to you. A testamentary guardian is not the same as a special guardian.

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- The special guardian must also notify you and your child's other parent if your child dies.<sup>5</sup>
- Any existing Care Order on your child is automatically ended when the Special Guardianship Order is made.<sup>6</sup>

**Note:** As a parent, you can only apply to end the Special Guardianship Order if you can prove there has been a ***significant change in circumstances since the original SGO was made*** – for more information on this see page 14-15 below.

## **What happens if I disagree with how the special guardian is raising my child?**

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The special guardian has parental responsibility for your child. They don't have to ask you about most decisions they are making about your child (except in the circumstances set out above on page 5). However, you also have parental responsibility, so if there are things about how your child is raised that you feel very strongly about, you can tell the special guardian what you would like to happen. For example, you may want to tell them that you are unhappy about the arrangements for you to see your child or their plans for your child's immunisations or medical treatment. But remember, you cannot insist.

If you disagree with the special guardian's decisions about your child, the best approach is usually to talk to them directly and explain (as gently as possible) your point of view and why you think what they are planning will not be good for your child. But if you find it difficult to talk to the special guardian directly, you could:

- ask the social worker (if you have one) to help you with this;
- ask the special guardian if they will see a **family mediator** with you. Family mediators help people find solutions when there are disagreements about arrangements for a child. They are neutral and do not take sides. They keep the discussion very focussed on the ***child's***, rather than the adult's, needs. It is the adults taking part in the mediation (rather than the mediator) who make the decisions. In many cases, mediation is very successful in resolving disagreements, but if this does not work for you, you could apply to court;

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- **apply to court** and ask the judge to decide about the disagreement. You would need to apply for a “Prohibited Steps” or “Specific Issue” Order which would say how the dispute should be settled.<sup>7</sup> However if you make repeated applications to court about the same kind of thing and this is disrupting your child’s life with the special guardian, the court has the power to stop you from applying to court.<sup>8</sup>

## **Who is financially responsible for a child who is under a SGO?**

As a parent, you remain financially responsible for supporting your child throughout the SGO. Correspondingly, the special guardian does not become financially responsible for your child in legal terms although they may do so in practice.<sup>9</sup>

If Children’s Services has been involved, it is possible for them to give financial help to the special guardian, but they don’t have to.<sup>10</sup> If they do give financial help, it will be means tested. This is discussed further in Part 3 below.

## **Who is financially responsible if my child wants to attend further and higher education?**

- **Further education:** Your child may be able to get financial help to be in further education under a college-based ‘bursary’ scheme which is available for some 16-18 year olds who continue their education after GCSE’s. If they are eligible for help under this scheme, they would be assessed for it on the basis of the special guardian’s income, not yours. But note they do not have a right to this help.
- **University Loans and Grants:** If your child applies for financial support at university, they will be assessed on the basis of your/their parents’ income,<sup>11</sup> not the special guardian’s, unless they are classed as independent. They may also get financial support for higher education and vacation accommodation from Children’s Services<sup>12</sup> if they are under 25 and were looked after in the care system immediately before the Special Guardianship Order was made.

## PART 2: THE COURT PROCESS AND SPECIAL GUARDIANSHIP

### Who can apply for a Special Guardianship Order?

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If someone wants to apply for a Special Guardianship Order on your child they:

- must be over 18;
- cannot be a parent of the child;<sup>13</sup> and
- can apply on their own or jointly with another person.

Your child does not have to have lived with them before they apply for a Special Guardianship Order, but they do have to tell Children's Services before they can apply to court for a Special Guardianship Order – see page 9.

However the law does not allow just anyone to apply for an order on your child: there are some people who have a *right* to apply for an order including:

- Anyone who already has a Residence Order or a Child Arrangements Order (saying who the child should live with) on your child
- A foster carer who has had your child living with them for at least one year immediately before they apply to court
- A grandparent, aunt, uncle, sibling, step-parent who has had your child living with them for one year immediately before they apply to court
- Anyone who has had your child living with them for at least 3 out of the last 5 years before they apply to court
- A guardian of your child - this is someone who has been appointed by the parents with parental responsibility or who has been appointed by a previous special guardian to look after their child after their death<sup>14</sup>
- Anyone else who has the agreement of:
  - a person who already has a Residence Order or a Child Arrangements Order (saying who the child should live with) on your child;
  - Children's Services if your child is in care; and
  - in any other case, each person who has parental responsibility for your child (that is usually you, the parents, but it may also include step-parents, guardians etc). For further information on who has parental responsibility

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see FRG advice sheet on Parental responsibility:

<http://www.frg.org.uk/need-help-or-advice/our-advice-service/advice-sheets>

Anyone else who wants to apply for a SGO has to ask the Court's permission before they can make their application. When deciding whether to give this permission, the court must take account of a list of factors including:<sup>15</sup>

- Their connection with your child
- Any risk of disruption to your child's life caused by the *application* to the extent that s/he would be harmed by it
- Children's Services' plans for your child; and
- Your wishes and feelings and those of your child's other parent.

The court can also make a Special Guardianship Order if it is already hearing a case about your child in any other family proceedings (for instance care or adoption proceedings), even if no application has been made.<sup>16</sup>

## **Will Children's Services be involved in the case?**

Children's Services always gets involved when there is an application for a Special Guardianship Order because ***the person applying for the order must first tell Children's Services in writing that they want to apply for a Special Guardianship Order three months before they can apply to court.***<sup>17</sup>

Once Children's Services receives this notification, they must investigate your child's case and then send a report to the court on whether they think that the person applying for the order is suitable to be a special guardian and some other relevant issues as well. This will involve a social worker talking to you to find out:

- Background information about your child and your family;
- Your current wishes about where your child should live; and
- Who in your family has an important relationship with your child which should be maintained even if they are living with the special guardian.<sup>18</sup>

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***In all cases the court cannot make a Special Guardianship Order unless it has received this report from Children's Services.<sup>19</sup>***

Once the report is filed with the court, the court must decide:

- Whether to limit who in the case can see this report; and/or
- Whether any confidential addresses should be removed before the report is circulated to everyone in the case.<sup>20</sup>

The report will also be given to any CAFCASS (Children and Family Court Advisory and Support Service) officer who is involved in the case.

### **Does the person applying for the SGO have to try mediation before they make an application for a court order?**

The law has recently changed so that, unless there is evidence of domestic violence or there are child protection concerns, people who apply for a court order about children's arrangements have to meet with a mediator to discuss whether mediation may be a suitable way of resolving their case, before making their application to court<sup>21</sup>. This meeting is called a mediation, information and assessment meeting or 'MIAM'.

This means that the person who wants to apply to court for a Special Guardianship Order will normally have to prove to the court that they have met with a mediator to discuss whether their case could be resolved through mediation.

**If the person applying for the SGO does see a mediator, the mediator will contact you to discuss their application. You do not need to see or speak to the mediator if you don't want to, but it is usually helpful and can be a less stressful way of resolving the dispute about where your child should live.**

Further information about accessing family mediation services can be found in Part 4.

### **Will anyone represent my child in the case?**

Your child will not automatically be represented in the case but they will be in the following circumstances:

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- If there is an existing Care Order or there are ongoing care proceedings, a court officer known as a Children’s Guardian will be appointed to represent them in the case. This person works for CAFCASS or in Wales for CAFCASS Cymru. They will also choose a solicitor for your child.<sup>22</sup>
- If there is no existing Care Order and there are no pending care proceedings on your child, the court may appoint a CAFCASS officer to represent your child if it thinks this would be in your child’s best interests, but they don’t have to.<sup>23</sup>

When Children’s Services prepares its report for the court, it may say in the report if there are other circumstances which suggest that your child should be represented in the proceedings.

## **What are the grounds for making a Special Guardianship Order?**

When deciding whether to make a Special Guardianship Order, your child’s welfare and best interests are the court’s most important considerations above everything else.<sup>24</sup>

When thinking about whether the Special Guardianship Order would be in your child’s best interests, the court must look at a list of factors known as the welfare checklist,<sup>25</sup> including:

- Your child’s wishes and feelings
- Your child’s physical, emotional and educational needs
- The likely effect of any changes of circumstances on your child
- Your child’s age, sex, background and any other characteristics which the court considers relevant
- Any harm which your child has suffered or is at risk of suffering
- How capable each of you as parents, and any other significant person in your child’s life, are of meeting their needs
- The other powers available to the court to make legal arrangements for your child, for example the power to make a Child Arrangements Order (saying who the child should live with).

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The court must also avoid unnecessary delay and should not make the order unless it will positively benefit your child.<sup>26</sup>

## **What alternative orders could the court make instead of a Special Guardianship Order?**

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If your child is going to live with someone else in the medium to long term, the court could also consider making a Child Arrangements Order (saying who the child should live with) instead of a Special Guardianship Order, to confirm the arrangement legally and give that person parental responsibility.

**A Child Arrangements Order (saying who the child should live with)** gives the carer the power to make some, but not all, decisions about your child. In this way it is slightly less strong than a Special Guardianship Order. It gives the carer parental responsibility and they can still make decisions about how to raise your child without asking you what you think.<sup>27</sup> But there is more of an expectation that the parent will be involved in some decision making with a Child Arrangements Order than with a Special Guardianship Order.

There are also more restrictions on what the carer can do or decide with your child under a Child Arrangements Order than a Special Guardianship Order, for example with a Child Arrangements Order (saying who the child should live with):

- They cannot take your child outside the UK for more than one month without either your agreement and the agreement of everyone else with parental responsibility or the permission of the court;<sup>28</sup>
- They cannot appoint a testamentary guardian to look after your child after they die.

However, if you disagree with the decisions the carer makes under a Child Arrangements Order, the steps you can take to challenge their decision are the same as with special guardianship:

- You can try to discuss your concerns with the carer either directly or with the help of a social worker or family mediator; or

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- You can apply to court for an order to resolve the dispute.

For further information on this see page 5-6 above.

Finally, unlike with special guardianship, as a parent you **can apply** to discharge (end) a Child Arrangements Order without having to prove a change in circumstances since the order was made. For further information on what you have to do to apply to discharge a Special Guardianship Order, see page 14-15.

For further information about Child Arrangements Orders or other legal alternatives to special guardianship, see Appendix 1 and also contact FRG advice service - contact details in Part 4 of this advice sheet.

## **Can I still see my child if there is a Special Guardianship Order?**

Many children who are under Special Guardianship Orders stay in contact with their parents and members of their family. However, whether you can see your child will depend on the individual circumstances of your case.

The law says that before making a Special Guardianship Order, the court must consider whether to make a Child Arrangements Order (saying who the child should see) saying what contact should take place after the Special Guardianship Order has been made. This is not the same as saying that they have to order contact – but it does mean that the court must think about whether to make an order.

The court will make a Child Arrangements Order (saying who the child should see) if it thinks that seeing you will be in your child's best interests and that contact will not happen unless an order is made.<sup>29</sup> The court can order contact even if the special guardian does not agree.<sup>30</sup>

A Child Arrangements Order (saying who the child should see) can also be made or changed at a later date, after the Special Guardianship Order has been made.<sup>31</sup>

## **Can I get any help with contact arrangements?**

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Children's Services **may** offer you (and other members of the family) help with contact. For example they may:

- Help you to see your child, for example they can help with your travel expenses or the costs of taking your child out somewhere;
- Be willing to pay your mediation costs if there are difficulties over contact that you and the special guardian want to try to sort out with the help of a mediator.<sup>32</sup>

However they don't have to give you this help. They will decide whether to help you based on the result of their assessment of your need, your child's need and the special guardian's need for this support. For more information about getting help see Part 3 of this advice sheet.

### **When can a Special Guardianship Order be discharged (ended)?**

Unlike an Adoption Order which is permanent, a Special Guardianship Order can be ended. The following people may apply to court for it to be ended:<sup>33</sup>

- The special guardian;
- Any person with a Child Arrangements Order on the child (for example after the Special Guardianship Order was made);
- Children's Services if they have a Care Order on your child (for example after the Special Guardianship Order was made).

Parents and other people who are not in the above list (i.e. the child themselves, guardians, step-parents and anyone else with parental responsibility before the SGO was made) **cannot** apply to end the order unless they get the court's permission first.<sup>34</sup> The court will only give this permission:

- If it is satisfied that there has been a "**significant change of circumstances**" since the Special Guardianship Order was made;<sup>35</sup> and
- After it has considered the welfare of the child and the chances of you being successful in your application to end the order.<sup>36</sup>

The court may also change or end the Special Guardianship Order in other family proceedings about your child if this is in their best interests, even if no-one has applied to end the order.<sup>37</sup>

## **Will there be any publicity about my case?**

The basic rule is that a judgment in a family court case involving children **cannot** be published unless the hearing was held in public or the judge has given permission. However the rules have recently changed so that when a case is heard by a ***circuit judge or a High court judge***, certain judgements (for example in care proceedings) are to be published 'unless there are compelling reasons' why they shouldn't be. This is decided on a case by case basis. You, your child and your family should not be identified but any professionals in your case would normally be named.

If you are worried about publicity talk to your solicitor about it – they may be able to argue against it in court if you have good reasons to object.

## **PART 3: GETTING HELP FROM CHILDREN'S SERVICES WHEN THERE IS A SPECIAL GUARDIANSHIP ORDER ON YOUR CHILD**

### **Can parents get help when a Special Guardianship Order is made?**

Children's Services have the power to help parents of children under Special Guardianship Orders (for example, with things like contact or counselling if you need help to adjust to the change in circumstances), but they don't have to. What they give you will depend on what the social worker assesses your needs to be.

### **Do Children's Services have to assess my needs?**

*If your child was looked after by Children's Services* in the care system (either with your agreement or with a court order) before the SGO was made, they **must assess your need for support** as well as the needs of your child and special guardian.<sup>38</sup>

*If your child was not looked after by Children's Services* in the care system before the SGO was made, they **may assess your need for support** if asked to do so.<sup>39</sup> This means that you can ask the social worker for support and they should normally assess your needs but they don't have to.<sup>40</sup>

Also, **whether or not your child was looked after by Children's Services, it may assess the need for support of other people** who have a significant involvement with the child (for example other members of the family).

### **What does an assessment of my needs involve?**

When a social worker assesses your needs, they should follow a local assessment protocol and relevant government guidance.<sup>41</sup> You can ask the social worker for a copy of this. They should also draw on any previous assessments of you and speak to you directly about your relationship with your child and the special guardian (if any) and the likely impact of a Special Guardianship Order on those relationships. They will also do a holistic assessment of your child's needs as well as your and/or the special guardian's need for support.

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## **How will Children's Services decide on what help to give me?**

At the end of the assessment, the social worker must draw up a written report. If Children's Services decide, as a result of assessment, that you need help with the Special Guardianship Order arrangement, they must decide whether to offer you support.

If they decide to give you support, they must prepare a plan of the help they will give.<sup>42</sup> This draft plan will then be sent to you and you must be given an opportunity (normally 28 days) to comment on it before it is finalised.<sup>43</sup>

You should also be referred to independent sources of advice and advocacy at this stage so you can get independent advice on how to get help. You can contact FRG advice service if you want further information about this - contact details in Part 4 of this advice sheet.

Once Children's Services hears back from you with your comments, they must finalise their plan and tell you what help they will give you.

They must also give you the name of the person in Children's Services who will monitor the implementation of the plan to give you help.

## **What can I do if Children's Services refuses to assess my need for support?**

If Children's Services refuses to assess your need for help, they must give you their reasons for refusing and give you 28 days to give your views about this refusal.<sup>44</sup> If you feel the refusal was wrong, you can make a complaint - see FRG advice sheet on [Challenging Decisions and Making Complaints: http://www.frg.org.uk/need-help-or-advice/our-advice-service/advice-sheets](http://www.frg.org.uk/need-help-or-advice/our-advice-service/advice-sheets)

## **What if Children’s Services assess my needs but then refuse to give me any help?**

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If they think you don’t need help, Children’s Services must tell you:

- that they plan to refuse you help;
- how you can make representations to them if you don’t agree with their decision; and
- how long you have to do this - normally it must be within 28 days<sup>45</sup>.

If after you have made representation they still refuse you support, you don’t have a right to appeal but if this decision appears to be totally unreasonable you could take advice about making a complaint or whether there may be grounds for judicial review. For further information on this see FRG advice sheet on Challenging Decisions and Making Complaints: <http://www.frg.org.uk/need-help-or-advice/advice-sheets>; or contact a solicitor; or Family Rights Group advice line – contact details in Part 4 of this advice sheet.

## **Can support services be taken away at a later date?**

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Any plan to provide you with support will be reviewed:

- Every year; or
- If there is a change in circumstances; and/or
- Whenever Children’s Services considers it appropriate.<sup>46</sup>

Reviews involve the same procedure for assessment as set out above, although if the change of circumstances is minor, the re-assessment may just mean a social worker writing to ask you questions, rather than a full re-assessment.

If Children’s Services plans to change or end the support they are giving you, they must tell you in writing and give you an opportunity to comment before they finalise their decision.

## **Which Children’s Services is responsible for support if my child moves area to live with the special guardian?**

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**Support for a parent:** The Children's Services Department which prepared the report for the court before the court case started, remains responsible for helping you, even if your child has moved to a new area with the special guardian.

**Support for the special guardian or child:** Who is responsible for this depends on whether the child was looked after in the care system before the SGO was made:

- If your child was looked after in the care system immediately before the Special Guardianship Order was made:
  - The Children's Services Department that was looking after them is responsible for providing support, even if the child moves to a new local authority after the order is made, for 3 years.<sup>47</sup>
  - After 3 years, the Children's Services Department in the area where your child now lives with the special guardian is responsible for providing all support<sup>48</sup> except financial help that was agreed before the Special Guardianship Order was made. In those circumstances, the Children's Services that was looking after the child before the Special Guardianship Order was made stays responsible for paying the Special Guardianship Order Allowance even after 3 years<sup>49</sup>.
- If your child was not looked after in the care system before the Special Guardianship Order was made:
  - If the child was not looked after in care, the responsibility for all Special Guardianship Order support lies with the Children's Services Department for the area where your child now lives<sup>50</sup>.

These responsibilities are clearly set out in the legislation and guidance<sup>51</sup>, but often Children's Services will still argue over which authority has responsibility. Courts have repeatedly said that Children's Services Departments should work this out between themselves, and that the special guardian should not miss out on support whilst Children's Services Departments argue about which one is responsible for giving support.<sup>52</sup>

## **PART 4: WHERE CAN I GET FURTHER INFORMATION?**

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**Citizens Advice** is an independent organisation providing free, confidential and impartial advice on all subjects to anyone. The address and telephone number of your local Citizen's Advice Bureau can be found in the telephone directory. There is also advice on their website.

Website: [www.citizensadvice.org.uk](http://www.citizensadvice.org.uk).

Advice Website: [www.adviceguide.org.uk](http://www.adviceguide.org.uk).

**Civil Legal Advice** is a free and confidential advice service. It provides information directly to the public on a range of common legal issues and helps people find legal help and information. It can also help you find legal advisors and find out if you are eligible for publicly funded free legal help.

Website: <https://www.gov.uk/civil-legal-advice> .

Telephone: 0845 345 4345. Minicom: 0845 609 6677

Monday to Friday, 9am to 8pm; Saturday, 9am to 12:30pm

Civil Legal Advice's find a legal advisor service is available at

<http://legaladviserfinder.justice.gov.uk/AdviserSearch.do>

**Coram Children's Legal Centre** provides free independent legal advice to children, parents, carers and professionals. Their website <http://childlawadvice.org.uk> provides free legal advice and information covering all aspects of law and policy affecting children. An advisor can be contacted on **0300 330 5480**

**Family Rights Group (FRG):** is an organisation which provides free telephone and email advice to family members who are involved with Children's Services about the care and protection of their children.

- Contact FRG's advice line for specific advice about your case on 0808 801 0366. It is open Monday-Friday 9.30am-3.00pm.
- You can also visit <http://www.frg.org.uk/need-help-or-advice/our-advice-service/advice-sheets> where you can download other relevant advice sheets.
- Or join the FRG parents' or family and friends carers' discussion boards.

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- FRG can also put you in touch with a **Family Group Conference Service**.  
Email [office@frg.org.uk](mailto:office@frg.org.uk).

### **Family Mediation**

To find a mediator, you can contact:

- the National Family Mediation (NFM) service in your local area. A list of services can be found at the following weblink: <http://www.nfm.org.uk>; or you can also call NFM on 01392 271610 - open 9.00am - 5.00pm (Monday - Friday); or email: [general@nfm.org.uk](mailto:general@nfm.org.uk) ; or
- the Ministry of Justice's Family Mediation Helpline (on 0845 602 6627) who can refer you to a mediator from their joint register.

Website: <http://www.familymediationcouncil.org.uk/>

Email: [info@familymediationcouncil.org.uk](mailto:info@familymediationcouncil.org.uk)

Address: Family Mediation Council, PO Box 593, Exeter, EX1 9HG.

### **Specialist child welfare solicitors:**

To find a solicitor who specialises in childcare law, you can contact:

- Solicitors Regulation Authority, Ipsley Court, Redditch, Worcestershire B98 0TD  
Telephone: 0870 606 2555 <http://www.sra.org.uk/consumers/find-use-instruct-solicitor.page>;
- The Law Society of England and Wales, 113 Chancery Lane, London WC2A 1PL  
Tel: 020 7242 1222 Minicom: 0870 600 1560 Fax: 020 7831 0344
- E-mail: [info.services@lawsociety.org.uk](mailto:info.services@lawsociety.org.uk) [www.lawsociety.org.uk](http://www.lawsociety.org.uk).
- You can search their website for details of local solicitors who are members of the Children Panel:  
<http://www.lawsociety.org.uk/choosingandusing/findasolicitor.law>
- Civil Legal Advice (details above).
- Citizens Advice (details above).

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**Appendix 1: Typical legal status of a child living away from parents with relatives, friends or foster carers who work for the council**

	<b>Informal arrangements including private fostering</b>	<b>Children in care under Emergency Protection Order or Care Order</b>	<b>Children in care system by agreement with parents and others with parental responsibility</b>	<b>Residence Order (RO)/Child Arrangements Order (CAO) (saying who the child should live with)</b>	<b>Special Guardianship Order (SGO)</b>
<b>Who has parental responsibility (PR)?</b>	Mothers, fathers or anyone else who has acquired PR by court order or other circumstances (see FRG advice sheet on PR)	Children's Services, mothers, fathers or anyone else who has acquired parental responsibility by court order or other circumstances (see FRG advice sheet on PR)	Mothers, fathers or anyone else who has acquired PR by court order or other circumstances (see FRG advice sheet on PR)	Person with RO/CAO, mothers, fathers or anyone else who has acquired PR by court order or other circumstances (see FRG advice sheet on PR)	Person with SGO who can exercise PR to exclusion of anyone else with PR; mothers, fathers or anyone else who has acquired PR by court order or other circumstances (see FRG advice sheet on PR)
<b>Who can make decisions on behalf of the child?</b>	Carer can make day to day decisions about child's care but only those with PR can make important decisions e.g. consent to medical treatment etc. Older children can make most decisions themselves	Carer can make day to day decisions about the child's care in consultation with Children's Services, but Children's Services makes all important decisions about child in consultation with parents or carers.	Carer can make day to day decisions about the child's care in consultation with Children's Services, but only those with PR can agree to important decisions e.g. consent to medical treatment etc. Older children can make most decisions themselves in consultation with the social worker	Person with RO/CAO can make decisions without having to consult others with PR (although should for important decisions) but some restrictions e.g. name change, consent to adoption/placement, change of religion).. Older children can make most decisions themselves	Person with SGO who has right to exercise PR to exclusion of anyone else with PR, but some restrictions e.g. name change, consent to adoption/placement, change of religion). Older children can make most decisions themselves
<b>Can parent remove the child and take them home?</b>	Yes if you have PR	No but Children's Services can take them away from the carer	Yes if you have PR but you would need the agreement of Children's Services otherwise they might start care proceedings – if in doubt get independent legal advice	No unless RO/CAO ended or Children's Services gets Emergency Protection Order or Care Order which gives them a right to remove the child	No unless SGO ended or Children's Services gets Emergency Protection Order or Care Order which gives them a right to remove the child
<b>Can the carer take child out of the UK?</b>	Only with consent of all those with PR, or permission of court.	Only with consent of Children's Services for up to 1 month, unless court gives permission	Only with consent of all those with PR or permission of court	For up to one month, otherwise they need the consent of all those with PR or the permission of the court	For up to three months, otherwise they need the consent of all those with PR or the permission of the court
<b>Can the order be ended?</b>	N/A	Yes – the court order will say how long it lasts or you may be able to apply for the order to end earlier	N/A	Yes – parents and others with PR have a right to apply to revoke the order	Yes but parents need permission of the court to apply to end the order - only granted if you propose significant change of circumstances since SGO made and it is in child's best interests

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## References

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<b>CA</b>	Children Act 1989 <a href="http://www.legislation.gov.uk/ukpga/1989/41/contents">http://www.legislation.gov.uk/ukpga/1989/41/contents</a>
<b>CFA</b>	Children and Families Act 2014 <a href="http://www.legislation.gov.uk/ukpga/2014/6/contents/enacted">http://www.legislation.gov.uk/ukpga/2014/6/contents/enacted</a>
<b>CSA</b>	Child Support Act 1991 <a href="http://www.legislation.gov.uk/ukpga/1991/48/contents/enacted">http://www.legislation.gov.uk/ukpga/1991/48/contents/enacted</a>
<b>FPR</b>	Family Procedure Rules for England and Wales 2010 <a href="http://www.legislation.gov.uk/uksi/2010/2955/introduction/made">http://www.legislation.gov.uk/uksi/2010/2955/introduction/made</a>
<b>SGR</b>	Special Guardianship Regulations 2005 <a href="http://media.education.gov.uk/assets/files/pdf/s/special%20guardianship%20regulations%202005.pdf">http://media.education.gov.uk/assets/files/pdf/s/special%20guardianship%20regulations%202005.pdf</a>
<b>Guidance</b>	Special Guardianship Guidance 2005 <a href="http://media.education.gov.uk/assets/files/pdf/s/special%20guardianship%20guidance.pdf">http://media.education.gov.uk/assets/files/pdf/s/special%20guardianship%20guidance.pdf</a>

<sup>1</sup> s.14C (1) Children Act 1989

<sup>2</sup> s.14C (3) & (4) Children Act 1989

<sup>3</sup> s.14C (2) Children Act 1989

<sup>4</sup> s.5 Children Act 1989 as amended

<sup>5</sup> s.14C (5) Children Act 1989

<sup>6</sup> s.91(5)A Children Act 1989

<sup>7</sup> s.8 Children Act 1989

<sup>8</sup> s.91(14) Children Act 1989

<sup>9</sup> s.1 Child Support Act 1991

<sup>10</sup> Reg.3 Special Guardianship Regulations 2005

<sup>11</sup> The Education (Student Support) Regulations 2011 (for those starting education after Sept 2012) sch 4 para 3

<sup>12</sup> s.24 (1)A CA and Regulation 22 SGR); s.24A & s 24B CA

<sup>13</sup> s.14A(2) Children Act 1989

<sup>14</sup> ss.14A (3)(4)&12) Children Act 1989

<sup>15</sup> s.10(9) Children Act 1989

<sup>16</sup> s.14A(6) Children Act 1989

<sup>17</sup> s.14A(7) Children Act 1989

<sup>18</sup> s.14A (8) Children Act 1989

<sup>19</sup> s.14A (11) Children Act 1989

<sup>20</sup> r.12.18 (2)&(4) FPR

<sup>21</sup> S10 CFA 2014 and FPR2010 Part 3

<sup>22</sup> s.41 (6) & s.91(5A) Children Act 1989 and r.16.2 -16.4 FPR

<sup>23</sup> r.16.2 and .16.4 FPR

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<sup>24</sup> s.1 (1) Children Act 1989  
<sup>25</sup> s.1(3) Children Act 1989  
<sup>26</sup> s.1 (2)&(5) Children Act 1989  
<sup>27</sup> S.2(7) Children Act 1989  
<sup>28</sup> S.13 Children Act 1989  
<sup>29</sup> s.1 Children Act 1989  
<sup>30</sup> Re: L (A Child) (Special guardianship and ancillary orders) [2007] All ER (D) 2008  
<sup>31</sup> s.14B (1)(b) Children Act 1989  
<sup>32</sup> s.14F Children Act 1989; r. 3(1)(c) Special Guardianship Regulations 2005; para 24 Guidance  
<sup>33</sup> s.14D(1) Children Act 1989  
<sup>34</sup> s.14A Children Act 1989  
<sup>35</sup> s.14D(5) Children Act 1989  
<sup>36</sup> Re G (SGO) [2010] 2 FLR 696 and M v Warwickshire CC [2007] EWCA Civ 1084  
<sup>37</sup> s.14D (2) Children Act 1989  
<sup>38</sup> s.14G and r.11 Special Guardianship Regulations 2005  
<sup>39</sup> s.14G and r.11 Special Guardianship Regulations 2005  
<sup>40</sup> r.11 Special Guardianship Regulations 2005  
<sup>41</sup> Working Together to Safeguard Children 2015 para 62 says that Children's Services should publish a local protocol for assessment and it specifies the things that need to be covered in it. Also Special Guardianship Regulations (regs 57 & 58) and Guidance (paras 57 & 58) 2005: list things that must be covered in assessments for SGO support services.  
<sup>42</sup> r. 14 and 15 Special Guardianship Regulations 2005  
<sup>43</sup> r.14 and 15 Special Guardianship Regulations 2005  
<sup>44</sup> r.11(3) Special Guardianship Regulations 2005  
<sup>45</sup> s. 14F(5) CA and Regulation 15 SGR  
<sup>46</sup> r.17 Special Guardianship Regulations 2005  
<sup>47</sup> s14F Children Act 1989 and Reg 5 SGR 2005  
<sup>48</sup> SGR Reg 5(2)  
<sup>49</sup> SGR reg 5(2)  
<sup>50</sup> s14F Children Act 1989  
<sup>51</sup> Special Guardianship statutory guidance 2005 para 37  
<sup>52</sup> See Suffolk CC v Nottinghamshire CC [2012] EWCA Civ 1640

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