



Special Guardianship or Child Arrangements Order?

Are you a grandparent raising your grandchild, or a friend or relative bringing up a child who is not your own? If so, you might want to consider taking out a legal order.

1. What are Special Guardianship Orders and Child Arrangements Orders?

A Special Guardianship Order (SGO) is an order appointing one or more people as Special Guardian to a child and in doing so, secures the child's home with them and grants them parental responsibility.

There are two types of Child Arrangements Order. One type says where a child is to live and the other says who a child can spend time with and for how long. Child Arrangements Orders replaced Residence and Contact Orders in 2014.

This factsheet is about Child Arrangements Orders concerning a friend or relative taking on the care of someone else's child. A person named in a Child Arrangements Order as a person with whom a child lives has parental responsibility for the child. Parental responsibility is the legal term for the authority to make decisions and be responsible for a child. Most parents have parental responsibility but other people can also have it when a court orders them to have it.

2. What are the main differences between Special Guardianship Orders and Child Arrangements Orders?

Both Special Guardianship Orders and Child Arrangements Orders leave existing family relationships intact, meaning that the birth mother and father are still legally the parents. This is different to Adoption Orders which end the old family relationships and make the adopting person the child's legal parent.

Both Special Guardianship Orders and Child Arrangements Orders (if stipulating with whom a child shall live) grant parental responsibility but Special Guardians are entitled to exercise their parental responsibility to the

exclusion of any other person with parental responsibility.¹ This means that a Special Guardian makes the final decisions about a child - for example, what school they should go to or whether they should receive medical treatment. The mother and/or father of the child cannot overrule a Special Guardian.

Even though a Special Guardian has enhanced parental responsibility, they will still need the consent of other people with parental responsibility (such as the child's mother or father) in some situations, for example if they wish to remove the child from the country for more than 3 months or to change the child's surname.

With a Child Arrangements Order parental responsibility is again shared. A person with whom a child lives is given the authority by the court to make the day to day decisions for the child (for example whether the child should go on a school outing), but does not allow him or her to exclude other people with parental responsibility from big decisions in the child's life.

A relative or friend caring for a child under an informal arrangement, with no order in place, will not have parental responsibility for the child. Legally the carer will need the consent of the parents when for example seeking medical treatment for the child, choosing a school, taking holidays abroad, organising the child's finances and any other matters that require consent of a person with parental responsibility.

You may believe you are caring for a child under an informal arrangement, but if the Local Authority was involved in placing the child with you, it is possible that you should be assessed and paid as a foster carer. If you think this may apply to you, you should seek specialist legal advice. See <https://www.grandparentsplus.org.uk/for-kinship-carers/advice-and-support/legal-options/> for sources of help.

3. Why make a Special Guardianship Order instead of a Child Arrangements Order?

Special Guardianship Orders aim to give a stronger degree of permanence to children than a Child Arrangements Order. When there is a Special Guardianship Order the child's mother or father may only apply to end the order if the court gives them permission. It will only do so where there has been a significant change of circumstances from the time when the court decided to make the Special Guardianship Order.

Where there is a Child Arrangements Order the parents are able to make an application to discharge the order without the permission of the court. This means that where a Child Arrangements Order is in place it will be easier for parents to seek to change the arrangement.

There is a presumption that parents will remain involved with their child unless it can be shown that to do so will put the child at risk of suffering significant harm. Involvement has a wide meaning from shared care to indirect contact by way of letters or cards.

4. Special Guardianship Support

Local Authorities are obliged to set up Special Guardianship support services in their area although this does not mean that they have to provide support services to every child under a Special Guardianship Order. These support services should include counselling, advice, information and financial support.² They must also provide

¹ Children Act 1989 s14C

² Children Act 1989 s14F

services to enable families to discuss matters relating to Special Guardianship, assistance in relation to arranging contact, training, respite care, and services relating to the therapeutic needs of the child.³

Financial support can be given where the Local Authority consider it to be beneficial to the child's welfare.⁴ It is only payable where:

- It is necessary to ensure the Special Guardian can look after the child;
- The child needs special care which requires more expenditure than would otherwise be the case because of illness, disability, emotional or behavioural difficulty, or past abuse or neglect;
- It is appropriate to cover certain legal costs;
- It is appropriate to contribute to expenditure necessary for accommodating and maintaining the child.

Any regular financial support should be based on the allowance a foster carer would receive,⁵ but it is means tested and payment is discretionary.

In order to obtain any of these support services you must apply to the Local Authority for assessment. If the child was looked after by the Local Authority before the Special Guardianship Order was made it must carry out an assessment of your need for support if you ask them to. If the child was not previously looked after, the Local Authority may carry out an assessment of your need for support, but doesn't have to. If the Local Authority refuses to give you support, it must provide you with a chance to make representations.⁶

5. Child Arrangements Order and Support

The Local Authority has the power to give you financial help in the form of a Child Arrangements Order Allowance (they may still call it a 'Residence Allowance'). Payments are discretionary and means tested.

6. Mediation

The general rule introduced by the Children and Families Act 2014 is that family disputes should be resolved by way of mediation and agreement where possible. Unless there is evidence of domestic violence or there are child protection concerns, people who apply for a Special Guardianship Order or a Child Arrangements Order have to meet with a mediator to discuss whether mediation may be a suitable way of resolving their case before making their application. This meeting is called a mediation, information and assessment meeting (MIAM). If at least one party is entitled to public funding the cost of the MIAM will be met by the Legal Aid Agency. An application for a Special Guardianship Order or Child Arrangements Order must be accompanied by confirmation from a mediator that a MIAM has taken place or evidence that an exemption applies.

Go to www.familymediationcouncil.org.uk to find family mediators in your local area.

³ Special Guardianship Regulations 2005 Regulation 3

⁴ Special Guardianship Regulations 2005 Regulation 6

⁵ B v Lewisham London Borough Council [2008] EWHC 738 (Admin)

⁶ Special Guardianship Regulations 2005 Regulation 15

8 Family Procedure Rules (Amendment No. 3) 2014 rule 3.8

6. Applying for a Special Guardianship Order or Child Arrangements Order

Notifying the Local Authority – Special Guardianship Orders only

You cannot apply for a Special Guardianship Order unless you have given at least 3 months' notice to the Local Authority where you live, or if the child is in care, to the Local Authority looking after the child. You can give notice by sending a letter to the relevant Children's Services department. Once Children's Services receive the notice they must investigate and file a report with the court on your suitability to be a Special Guardian and other related questions. This will include the relative merits of a Special Guardianship Order compared to other possible orders, as well as contact arrangements.

Permission of the Court

Whether you are applying for a Special Guardianship Order or Child Arrangements Order you must obtain leave (permission of the court), unless you have the consent of all those with parental responsibility or you have had the child living with you for at least 3 out of the last 5 years. As a close relative you may also make the application without leave if the child has lived with you for at least one year leading up to the date of the application. You can apply for permission at the same time as you apply for a Child Arrangements Order, but if you are applying for a Special Guardianship Order you must apply for permission before you give notice to Children's Services.

Applying for the Order

It can be complicated to know which court forms you need to complete as it depends on the order you are seeking, whether you need to apply for leave and whether there is an existing case about the child.

If you ask a solicitor to apply for a legal order on your behalf, you will be responsible for paying their costs unless you are eligible for legal aid or the Local Authority agrees to pay. It is possible to apply on your own as a 'litigant in person' but you will normally have to pay a court fee unless you are exempt on financial grounds.

Generally speaking, you should apply to the Family Court nearest to where the child lives. However, if you are making an application about a child where there are existing proceedings, you should apply to the Family Court which is dealing with that case. Court staff can advise you which forms you need. For further sources of advice on making an application <https://www.grandparentsplus.org.uk/for-kinship-carers/advice-and-support/legal-options/>

Further questions? Grandparents Plus advice service provides:

- **Free, comprehensive advice on welfare benefits and other sources of financial support.**
- **Independent advice and information on a wide range of other issues including employment, housing, education, disability parenting and legal options.**

Open Mon – Fri 9.30am – 3.30pm. Translation service available.
Call 0300 123 7015 or email
advice@grandparentsplus.org.uk
www.grandparentsplus.org.uk



This factsheet is for information only and should not be taken as a full statement of the law.

Last updated April 2020. Updated by Jayne Harrill (4 Brick Court) and Nicola Kerr (Grandparents Plus) April 2020

Jayne Harrill and Marc Mason (Barristers)
4 Brick Court Chambers
London EC4Y 9AD