

Beck Fitzgerald

lawyers & consultants

Special Guardianship



*working for
accessible justice*

Beck Fitzgerald is a specialist family practice based in central London and committed to accessible justice.

Our aim is to enable more families to get the expert help they need when they need it, at a price they can afford.

Alongside our casework with clients, we strive to challenge the family justice system to improve outcomes for the children and families we serve

We work tirelessly to improve the laws and protection for victims and their children so that they can feel safe.

We do not judge, and all our team are trained in trauma informed ways of working. We will help you find the best legal solution for you and your children.

Special Guardianship

This guide is designed to provide you with some information about Special Guardianship Orders and to make you feel more comfortable if you have to attend court.

When would a party apply for a Special Guardianship Order?

In some circumstances children are not able to live with their parents and have to be cared for by someone else.

A special guardianship order can be made when it is intended that a child should live permanently with carers who are not their parents, often relatives or family friends.

The aim of a special guardianship order is to legally secure the child's permanent placement with those carers.

A special guardianship order gives parental responsibility to the carers who become known as "Special Guardians".

On the making of an order the parents retain parental responsibility for their child but the special guardians can exercise their own parental responsibility to the exclusion of others, including the parents.

This means that special guardians can make important decisions concerning the child and are not required to consult with the child's parents.

There are some important exceptions to this, for example, where a special guardian wishes to a change of the child's surname or remove the child from England and Wales for a period of more than 3 months. In these cases the consent of the parents or permission of the court is required.

Who can apply for a Special Guardianship Order?

Only certain people can apply for a Special Guardianship Order without first obtaining the permission of the court. This includes a person who has previously held a residence order for the child, a foster carer for a child where the child has lived with the carer for a year and any person with whom the child has lived for a period of 3 years out of the last 5 years.

Additionally, the court can give permission to a person to apply for a special guardianship order if there is a sufficient connection to the child or other justification for granting permission.

The person applying for a special guardianship order must give notice to the Local Authority of their intention to apply for an order three months before making an application. The Local Authority must then undertake an investigation and prepare a special guardianship assessment report.

This must address, amongst other things, the child's circumstances, the child's family, the wishes of the parents and child, the circumstances of the special guardian and how they will meet the child's needs.

Where there are existing proceedings concerning the child the court can of its own motion make a direction that the Local Authority prepares a special guardianship report with respect to any prospective carers for the child.

How does the court decide?

When considering whether to make a special guardianship order the court will apply the principle that the child's welfare is the most important consideration.

The court will also need to consider what is known as the "welfare checklist" in respect of the child. The welfare checklist consists of the following factors:

1. The ascertainable wishes and feelings of the child (in light of his age and understanding).
2. The child's physical, emotional and educational needs.
3. The likely effect on the child of any change in his circumstances.
4. The child's age, sex, background and any characteristics of his which the court considers relevant.

5. Any harm which the child has suffered or is at risk of suffering.
6. How capable each of the child's parents (and any other person in relation to whom the court considers the question to be relevant) is of meeting his needs.
7. The range of powers available to the court under the Children Act 1989 in the proceedings in question.

The court will also have regard to what is known as the "no order" principle. This is the principle that the court should make no order unless it considers that doing so would be better for the child than making no order at all.

When making a special guardianship order the court must also consider the question of contact between the child and his parent or other significant people in his life. The court can either approve contact arrangements that have been agreed between the parties or can make an order as to contact.

If subsequently contact arrangements are not satisfactory and not in the child's best interests it may be possible for the parent or other significant person to make a further application to the court to deal with the question of contact.

Support services

The Local Authority should make arrangements to provide support services for people affected by special guardianship. Often the services are provided to the special guardian by the Local Authority or other organisations on their behalf. The services provided by the Local Authority will depend upon the individual circumstances of the case

but typically include means tested financial assistance for the special guardians, support with contact and where appropriate therapeutic services for the child.

Can a Special Guardianship Order be discharged?

A special guardianship order is intended to be a permanent long term order enabling the special guardian to care for the child until he or she is 18 years of age.

It is, however, possible to make an application for a Special Guardianship Order to be discharged but a parent or guardian or the child him/herself will only be able to make an application if the court gives them permission to do so.

The court will only give such permission if it is satisfied that there is a significant change in circumstances since the special guardianship order was made.

It is, therefore, the case that it will only be in exceptional cases that the court will be willing to discharge a special guardianship order.

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