



## 2c) DIY special guardianship orders: care proceedings

Kinship carers are family members and friends raising children unable to live with their parents. This advice sheet is about special guardianship. Special guardianship is one type of kinship care arrangement. It is put in place when the Family Court makes a special guardianship order.



### About this advice sheet

This advice sheet is one in a series of five which look at special guardianship. This advice sheet is for relatives or friends who want information about special guardianship orders. It focuses on what happens when someone has been identified as a potential special guardian for a child who is subject to [care proceedings](#) and explains the process for applying for a special guardianship order. If you are looking for information and advice about the different types of kinship care arrangement that exist, you can find this on our [Kinship carers](#) page.

#### This advice sheet looks at:

- [The law about special guardianship](#)
- [What special guardianship is](#)
- [Identification of potential alternative carers during care proceedings](#)
- [The assessment process](#)
- [Care proceedings: the court process and legal advice](#)
- [Where to go for further information](#)

#### The advice sheets in this series are:

- 2a) Special guardianship: an introduction
- 2b) Special guardianship: what does it mean for birth parents?
- 2c) DIY special guardianship orders: care proceedings
- 2d) DIY special guardianship orders: private law proceedings
- 2e) Practical and financial support for special guardians

These advice sheets, and others about kinship care, are all available to read on our [Advice sheets](#) page.

The information contained in this advice sheet is for guidance only. Every effort is made to ensure it is correct at time of publication. But it should not be used as a substitute for legal advice or for individual advice about your case. Please note that the information is about the law in England only.



## The law about special guardianship

### The law about special guardianship orders is found in three main places:

- The Children Act 1989.<sup>1</sup>
- In regulations called the Special Guardianship Regulations 2005.<sup>2</sup>
- In government guidance called the Special Guardianship Guidance 2017.<sup>3</sup> This is [statutory guidance](#). Children's services must have regard to it. The courts have said this means it should be followed, unless there is good reason not to (R v Islington LBC ex p Rixon [1998] 1 CCLR 119).

## What special guardianship is

### 1. What is a special guardianship order?

A special guardianship order is a court order that says a child will live permanently with someone (who is not their parent) until they are 18. A special guardianship order gives the special guardian 'exclusive' [parental responsibility](#) for the child. This gives them the authority to take all major decisions about the child's upbringing and care.

#### For example:

- Providing a home for the child.
- Protecting and caring for the child.
- Consenting to the child's medical or dental treatment.

#### Special guardianship orders are appropriate for kinship care placements because they:

- Give the special guardian parental responsibility for the child.
- Allow the special guardian to exercise their parental responsibility to the exclusion of all others with parental responsibility.
- Maintain the connection between a child and their parents.

### 2. How does the Family Court decide whether or not to make a special guardianship order?

The following section of this advice sheet focuses on what happens when a relative or friend is being considered as a long-term care option for a child who is subject to care proceedings. But it is helpful for families to be aware of what the court will consider when deciding whether to make a special guardianship order.

The table below sets out the key legal principles that the court will keep in mind when considering an application for a special guardianship order:

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<sup>1</sup> [Children Act 1989](#)

<sup>2</sup> [Special Guardianship Regulations 2005 \(as amended\)](#)

<sup>3</sup> [Special guardianship Guidance 2017](#)



Legal Principle	What does this mean?
<b>The welfare principle, including the welfare checklist</b>	<p>The court must follow the 'welfare principle'<sup>4</sup> when deciding any case concerning a child. This principle says that the child's welfare is the most important factor. When looking at what is best for the child, the court has to take into account a number of matters. These are set out in the 'welfare checklist'<sup>5</sup>:</p> <ol style="list-style-type: none"> <li><b>The child's wishes and feelings</b>, depending on their age and maturity. The social worker will normally speak directly to the child about their wishes and feelings (unless they are too young). This may be important if a child is finding it difficult to tell their parent or carer directly who they want to live with.</li> <li><b>The child's physical, emotional and educational needs</b>. The court will consider the prospective special guardian's proposals for meeting the child's needs. This includes their physical care and how their emotional needs will be met. The court will also consider how the prospective special guardian proposes to meet the child's educational needs, including whether they might need to change nursery or school.</li> <li><b>The likely effect on the child of any change in circumstances</b>. For example, the disruption of the child moving home will be outweighed by the benefits of the care they will receive whilst living with the new carer.</li> <li><b>The child's age, sex, and background and any other characteristic the court finds relevant</b>. This might include factors such as the child's: <ul style="list-style-type: none"> <li>• religion</li> <li>• ethnic background</li> <li>• languages spoken</li> <li>• any disability they may have.</li> </ul> </li> </ol> <p>The court will look at how any needs the child has relating to these factors could be met by the prospective special guardian.</p> <ol style="list-style-type: none"> <li><b>Any harm which the child has suffered or is at risk of suffering</b>. The court will need to be reassured that the prospective special guardian can protect the child from harm. For example, if there are concerns about the parents' ability to care for the child, can their carer make appropriate decisions in relation to contact.</li> <li><b>How capable each of the child's parents or other relevant person is of meeting their needs</b>. The court will consider the prospective special guardian's proposals to care for the child alongside any proposals from their parents and others who have a significant relationship with the child.</li> <li><b>The power of the court to make other orders</b>. In some circumstances, the court can make a different order from the one that has been applied for. This would only happen if the court felt it would be in the best interests of the child. For example, an application may have been made for a special guardianship order, but the court thinks a child arrangements order (saying who the child should live with) is more appropriate. The court will also look at contact arrangements for the child and may make a contact order.</li> </ol>
<b>No order principle</b>	<p>The court must be satisfied that making a special guardianship order is better for the child than not making the order.<sup>6</sup> The court will want to look at evidence about all possible options for the child. It will want to see that the prospective special guardian's plans for the child's care will meet their needs.<sup>7</sup></p>
<b>Avoiding delay</b>	<p>The court must follow the general principle that any unplanned delay in deciding the case is likely to negatively affect the child.<sup>8</sup> But sometimes delays are still necessary. For example, where the court wants more time to ensure children's services have worked with the family to put in place the right support.</p> <p>The court will weigh up the potential benefits of delaying the case against the possible harm any delay might cause to the child.</p>

<sup>4</sup> See [section 1 \(1\) of the Children Act 1989](#)

<sup>5</sup> See [section 1 \(3\) of the Children Act 1989](#)

<sup>6</sup> See [section 1 \(5\) of the Children Act 1989](#)

<sup>7</sup> See [G \(A Child\) \[2013\] EWCA Civ 965](#)

<sup>8</sup> See [section 1 \(2\) of the Children Act 1989](#)



## Identification of potential alternative carers during care proceedings

### 3. Why might a relative or friend be considered as a potential special guardian for a child who is subject to care proceedings?

Someone can apply for a special guardianship order if they are over 18 and are not the child's parent.

The person applying:

- Does not need to be related to the child.
- Can apply on their own or jointly with another person.

But the Family Court can also make a special guardianship order in any existing Family Court proceedings. The court can do this even if no-one has made a separate application for a special guardianship order. But it should only do this where it thinks that it would be in the child's best interests.<sup>9</sup> This often happens in care proceedings for a child where one of the options for the child's long-term care, is that they will live with a family member or friend. Care proceedings is the legal process where children's services apply to the Family Court to become involved in a child's care. They may do this if they are concerned that a child has suffered significant harm or is likely to. When children's services start care proceedings, they must consider whether any family members might be able to care for the child if they are unable to return home. A relative or friend willing to offer the child a long-term home can be assessed to see if they are suitable to be the child's special guardian.

In this situation, the person being considered as a potential special guardian for the child does not typically make a separate application for a special guardianship order. Instead, the court will make an order directing children's services to do an assessment of them (see [the assessment process](#) below for more information). At the end of the care proceedings, the court will consider all of the possible options for the child. For example, whether they can go home to their parents, or if they should move to live with the relative. The court may then decide to make a special guardianship order at the final hearing (even if the relative hasn't made a separate application for this order). Sometimes, children's services encourage relatives or friends to apply for a special guardianship order as an alternative to them issuing care proceedings. For example, if children's services have asked a family member to step in and care for a child, and it is then thought that that arrangement needs to be formalised. See our advice sheet [2d](#)) DIY special guardianship orders: private law proceedings for more information about this application process.

### 4. What will happen if someone is identified as a potential special guardian for a child who is subject to care proceedings?

Relatives or friends might be identified as potential alternative carers for a child during the [pre-proceedings](#) process. Before children's services can start care proceedings, there are procedures that they should follow under the pre-proceedings framework. This includes seeing if support is available in the family and friends network and who may be able to care for the child if they cannot remain safely at home. So ideally, relatives and friends would have been assessed as potential carers for the child before care proceedings start. But sometimes, for example in an urgent situation, these assessments won't take place until care proceedings have started. Either way, they will have an in-depth assessment of their suitability to become a special guardian for the child.

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<sup>9</sup> See [section 14A \(6\) of the Children Act 1989](#)



When someone is identified as a potential special guardian in the context of care proceedings, the court process will be quite different to if they had issued an application themselves for a special guardianship order. A case management hearing is usually the first court hearing that takes place in care proceedings. One of the first things the court needs to think about at that hearing, is who should be identified as a potential alternative carer for the child. The parents will be asked to say who they want to be assessed as long-term carers, in case the child cannot remain in their care. The court may also need to consider at this first hearing, where the child should live during the care proceedings. If they are not able to live with their parent, then the court will need to consider placing them with a relative or friend as a foster carer. This is known as kinship foster care. For more information about this, see our advice sheet [2g](#)) Becoming a kinship foster carer: the process.

If there is disagreement about what the interim (temporary) arrangements for a child should be, then the court can either:

- Try to make a decision at the CMH, or
- Set a date for a longer hearing when these things can be looked at and a decision made.

A [family group conference](#) is a good way to have a discussion about who might be assessed to care for the child (both short and long-term). A family group conference is a family-led planning meeting. It brings together the whole family, and others who are important to the child. Together, they make a plan for the child. Parents, relatives or friends can ask for a family group conference to take place, to help identify who is best placed in the family to be assessed as a potential carer. See our [Family group conference: advice for families](#) page for more information.

Once the parents have told the court which relatives or friends they want to be assessed, the court will ask children's services to do an [initial assessment](#) of those people. This is sometimes known as a 'viability assessment'. See '[the assessment process](#)' section below for more information.

## The assessment process

### 5. What will the initial assessment cover?

An initial family and friends care assessment is used to decide which members of a child's family and friends' network are a potentially realistic option to care for a child. The idea is to do a quick assessment to look at this. If an initial assessment says someone may be a potential realistic option to care for the child, then a full assessment then needs to be done.

Family Rights Group developed a good practice guide for initial assessments. [Appendix D of the guide](#) answers most common questions that families have about these assessments. This includes what they might be asked during the assessment. You can find easy to follow information about initial assessments in the 'Exploring kinship care' section of our [Kinship carers](#) page.

### 6. What happens if the initial assessment is positive?

If the initial assessment is positive, then the relative or friend will then go on to have a full special guardianship order assessment. This normally takes a few months and is much more in-depth. See [What does a full special guardianship assessment involve?](#) for more information.





Even if the initial assessment is positive, there might be some reasons why a full assessment is not done. For example, there might be several relatives with positive initial assessments. There will then need to be a discussion between children's services and the family to consider which person or people would be best placed to care for the child in the long term if necessary. Again, this discussion is best had in the context of a family group conference.

## 7. What happens if the initial assessment is negative?

If the assessment is negative, then children's services will not proceed to a full special guardianship assessment. They should provide the person who was assessed with a copy of their assessment, and a letter that explains their options at that stage. Options available to relatives and friends include:

- Accepting the decision.
- Writing a letter that explains why they may disagree with the outcome, or whether they think things in the report are wrong. That letter can then be attached to the report so that anyone (including the judge) who reads the report can understand any areas of disagreement.
- Seeking independent legal advice. This could:
  - Be advice from a solicitor. To find a solicitor, search using the 'how to find a solicitor' function on the [Law Society website](http://www.lawsociety.org.uk). Look for someone who is a child law specialist. Or who has '[Children Law Accreditation](http://www.childrenlaw.org.uk)'. For information about finding a solicitor and working with them, please see our top tips guide to [Working with a solicitor](http://www.frg.org.uk/working-with-a-solicitor).
  - Include posting a question on our [Kinship Carers Forum](http://www.frg.org.uk/kinship-carers-forum), to receive advice from one of our expert advisers, or for further advice or complex situations.
  - Be advice from Family Rights Group's specialist legal and practice advice line. Contact us on 0808 801 0366 (the advice line is open Monday to Friday, from 9.30am to 3pm excluding Bank Holidays).
  - Going to a court hearing to ask the court to make an order to allow further assessment.

## 8. What does a full special guardianship assessment involve?

The Family Court cannot make a special guardianship order unless it has received a full report from children's services about whether the person would be a suitable special guardian.<sup>10</sup> So once children's services have completed the initial assessments, they need to start a full assessment of those relatives and friends who have been assessed as a potential realistic option for the child. The social worker will then draw this up into a report, which is sent to the judge who will consider all of the long-term options for the child.

The special guardianship assessment report will be very detailed. The assessment will involve a social worker speaking to the relative or friend to find out more information about their background and their plans for if the child comes to live with them, including how they will maintain their relationship with their parents and other family members. The next table explains everything that a full special guardianship assessment will cover<sup>11</sup>.

<sup>10</sup> See [section 14A \(11\) of the Children Act 1989](http://www.legislation.gov.uk/ukpga/1989/41/section/14A)

<sup>11</sup> See [Regulation 21 of the Special Guardianship Regulations 2005](http://www.legislation.gov.uk/uksi/2005/1093/section/21) and the [Schedule](http://www.legislation.gov.uk/uksi/2005/1093/schedule) to the Regulations, which lists the matters to be dealt with in the court report.



Person, or area of discussion	What will the report include, and what might someone be asked about?
<b>The child</b>	<ul style="list-style-type: none"> <li>• Basic information about the child – including, name, date of birth, place of birth, a photograph and physical description.</li> <li>• Information about any brothers or sisters, including dates of birth.</li> <li>• Their nationality, immigration status, religion, race, culture and linguistic background.</li> <li>• Their educational needs, including their nursery/school and any special educational needs.</li> <li>• Their health history.</li> <li>• Their interests, likes and dislikes.</li> <li>• Information about arrangements for the child to keep in touch with their family and friends.</li> <li>• Whether the child has suffered any harm.</li> <li>• Any previous court orders made.</li> </ul>
<b>The child's parents and family</b>	<ul style="list-style-type: none"> <li>• Basic information about the parents – including, name, date of birth, place of birth, a photograph and physical description.</li> <li>• Information about the relationship between the child and their parents.</li> <li>• Information about the parents' relationship (for example, are they married, separated etc.), and other past or current relationship information.</li> <li>• Does the father have parental responsibility for the child? See our advice sheet about parental responsibility for clarification.</li> <li>• Their nationality, immigration status, religion, race, culture and linguistic background.</li> <li>• Their education and employment history.</li> <li>• Their health history.</li> <li>• Their interests and personality.</li> <li>• Information about the child's brothers and sisters (under age 18), including where they live, whether they are looked after by children's services, and any court orders made in relation to them.</li> <li>• Whether the parents may pose any risk to the child.</li> </ul>
<b>Wishes and feelings of the child, and of their parents</b>	<ul style="list-style-type: none"> <li>• The child's, and their parents', wishes and feelings about the proposed special guardianship order. The weight that the child's wishes and feelings has, will depend on their age and level of understanding.</li> <li>• Wishes and feelings in relation to the child's religious and cultural upbringing.</li> <li>• Wishes and feelings about arrangements for the child to keep in touch with members of their family, and other people who are important to them.</li> </ul>



Person, or area of discussion	What will the report include, and what might someone be asked about?
<b>The prospective special guardian(s)</b>	<ul style="list-style-type: none"> <li>Basic information about the prospective special guardian(s) – including, name, date of birth, place of birth, a photograph and physical description.</li> <li>Their nationality, immigration status, religion, race, culture and linguistic background.</li> <li>Their education and employment history, including information about their income and expenditure.</li> <li>Their health history.</li> <li>Their interests and personality.</li> <li>Information about the prospective special guardian's family – including their relationship status and any children (even if those children do not live at home), as well as their views on the proposed arrangements. Also including details of the parents and any siblings of the prospective special guardian, with their ages or ages at death.</li> <li>Whether they are a relative of the child, and their relationship with the child.</li> <li>Their parenting capacity, including previous experience of caring for children.</li> <li>Whether they have been previously assessed as a prospective adopter, foster parent or special guardian, and details of whether they have been involved in previous Family Court proceedings.</li> <li>Information about their home and neighbourhood.</li> <li>Three personal references</li> <li>The prospective special guardian's views on:               <ul style="list-style-type: none"> <li>Their reasons for applying for the order, and their understanding of special guardianship.</li> <li>Following the wishes and feelings of the child/their parents in relation to the child's religious or cultural upbringing.</li> <li>Their hopes and expectations for the child's future.</li> <li>Their wishes and feelings in relation to contact between the child and their parents and family.</li> </ul> </li> </ul>
<b>Children's services</b>	<ul style="list-style-type: none"> <li>Details of any involvement with the child.</li> <li>Details of any special guardianship support services to be provided to the child, their parents and the special guardian. Or where they have decided not to provide such services, the reasons for this.</li> </ul>
<b>Medical information</b>	<ul style="list-style-type: none"> <li>Both the prospective special guardian, and the child, will have a medical assessment done.</li> <li>The prospective special guardian's report will include details of any serious physical or mental illness, any hereditary disease or disorder or disability.</li> </ul>
<b>The child's long-term interests</b>	<p>This part of the report will look at the impact on the child and their family if a special guardianship order is made. It should include whether other types of placement, legal arrangements or orders have been considered.</p>
<b>Recommendations</b>	<ul style="list-style-type: none"> <li>The report should conclude with a recommendation from the social worker about whether a special guardianship order should be made. Or whether another type of legal arrangement or order would be better.</li> <li>It should also include a recommendation about the child's long-term contact with their parents, wider family and other people who are important to them.</li> </ul>





## 9. What happens if a full special guardianship assessment is negative?

If the assessment is negative, then children's services may not recommend that the relative or friend is put forward as a potential long-term care option for the child at the end of the care proceedings. If the child cannot return to their parents' care, and there are no other family and friends care options, then children's services may recommend to the court that the child is placed outside the family. For example, in long-term foster care, or they are placed for adoption. For more information about these options, see

The options for challenging a negative special guardianship assessment are the same as challenging a negative initial assessment. Children's services should provide the person who was assessed with a copy of their assessment, and a letter that explains their options at that stage. Options available to relatives and friends include:

- Accepting the decision.
- Writing a letter that explains why they may disagree with the outcome, or whether they think things in the report are wrong. That letter can then be attached to the report so that anyone (including the judge) who reads the report can understand any areas of disagreement.
- Seeking independent legal advice. This could:
  - Be advice from a solicitor. To find a solicitor, search using the 'how to find a solicitor' function on the [Law Society website](http://www.lawsociety.org.uk). Look for someone who is a child law specialist. Or who has [Children Law Accreditation](http://www.childrenlaw.org.uk). For information about finding a solicitor and working with them, please see our top tips guide [Working with a solicitor](http://www.frg.org.uk/working-with-a-solicitor).
  - Include posting a question on our [Kinship Carers Forum](http://www.frg.org.uk/kinship-carers-forum), to receive advice from one of our expert advisers, or for further advice or complex situations.
  - Be advice from Family Rights Group's specialist legal and practice advice line. Contact us on 0808 801 0366 (the advice line is open Monday to Friday, from 9.30 am to 3 pm excluding Bank Holidays).
  - Involve going to a court hearing to ask the court to make an order to allow further assessment. Or asking to be made a party to the court proceedings, so that the assessment can be challenged.

## Care proceedings: the court process

### 10. Will I be a party to the court proceedings?

A 'party' to court proceedings is a person or organisation who is subject to the court proceedings. This means that they are centrally involved in the case. A witness is not a party, for example.

Whether a prospective special guardian becomes a party to care proceedings will depend on whether, on receiving a positive assessment, they want to issue an application to become a special guardian. When they issue this application, it would be joined with children's services' application for a care order. It would be heard together in the same hearings with the same parties. But remember, it is not always necessary to issue an application to become a special guardian, because the court has the power to make a special guardianship order at a final hearing in care proceedings, without a separate application having been made.



The benefit of becoming a party to proceedings, is that the prospective special guardian would be in court throughout the care proceedings. They would be entitled to see the documents about the parents and the child, so they would have a better understanding about children's services' concerns about the parents. Parties to care proceedings can also apply for legal aid to be represented in the proceedings. See [Should relatives and friends who are being considered as special guardians get legal advice?](#) for more information.

Understandably, some people do not want to be seen to be setting themselves up in court against the parents and would prefer to simply confirm that they are happy to become a special guardian if the court decides that child cannot live with their parents. Even if a relative or friend does not issue an application for a special guardianship order, they might want to consider asking children's services, or their solicitor, to ask the court whether some of the court papers can be provided to them. This is known as disclosure. It can be helpful for prospective special guardians to do this, to ensure they have a good understanding of the assessments that have been done in the care proceedings. This can ensure they have all of the background information about the child's history, health and any risk they have suffered. These issues may affect the care that the child needs, and what support should be put in place for them.

## 11. Should relatives and friends who are being considered as special guardians get legal advice?

It is a good idea for prospective special guardians to seek legal advice. They can seek legal advice at any point in the process, but it is sensible to seek this at an early opportunity. That way, they can understand their rights and options from the outset, including how best to secure the child's future with them as circumstances change.

Even if someone has been positively assessed and children's services support the child being placed with them, they should get legal advice about the support plan that children's services have provided. This plan should outline the type and level of support that children's services will provide, if a special guardianship order is made. Their lawyer will ensure they are getting everything they are entitled to in terms of practical and financial support. For more information, see [2e](#)) Practical and financial support for special guardians

There are a number of options when it comes to seeking legal advice, and representation in care proceedings. If someone cannot afford to instruct a solicitor, then they can represent themselves in the care proceedings. This is known as being a 'litigant in person'. This DIY guide aims to help people in that position. But it might be possible to get support to access legal advice, either through legal aid, or through children's services funding the legal costs. This section of the advice sheet looks at the different ways legal advice can be funded, or free legal advice can be sought, in the context of care proceedings.

### Legal aid in care proceedings

Legal aid is the use of government money to pay for people to receive legal advice and representation. All parents whose children are subject to care proceedings automatically get free legal aid to cover the cost of a solicitor advising and representing them. This type of legal aid parents (and others with parental responsibility) get, is called non-means and non-merits tested legal aid. This means that it does not matter what the parent earns, or what savings they have. The strength of their case is also irrelevant. They will still receive free legal aid for their case.



Other people involved in care proceedings may be able to receive legal aid. This includes prospective special guardians who have been joined as a party to the care proceedings. But this will be means and merits tested. This means that whether they get legal aid will only happen if they can meet two tests:

- A means test: this involves looking at their financial situation. Their income and savings must be below a set level to qualify for legal aid. A solicitor will need to do a financial assessment. This will involve looking at the person's bank statements for the last three months.
- A merits test: this means the person wanting legal aid will have to demonstrate that they have a good case. To work out if they do, a solicitor must look at whether the person is likely to be successful in getting what they want in the case. To do this, the solicitor has to ask themselves this question – 'Would a reasonable person would use their own money to pay for the case?'. If they think the answer is yes, then the merits test will be met. The solicitor will want to look at the special guardianship assessment, to work out whether it is likely that the merits test will be met.

A specialist children law [solicitor](#) will be able to advise as to whether someone is eligible for legal aid. To find a solicitor, search using the 'how to find a solicitor' function on the [Law Society website](#). Look for someone who is a child law specialist. Or who has [Children Law Accreditation](#). For information about working with a solicitor, please see our top tips guide [Working with a solicitor](#).

### Children's services funding legal costs

If a social worker has asked someone to care for a child from their family and friends' network, then they may offer financial help towards their legal costs. But they don't have to do this. It is always worth asking the social worker for this important support. Typically, when a person has been positively assessed, children's services will pay for them to meet with a solicitor for some initial advice.

Children's services should have a policy explaining how they will support family and friends' carers.<sup>12</sup> This includes those who are applying for a special guardianship order. This might include the circumstances in which they will pay legal costs. Prospective special guardians can ask for a copy of this policy. If it does not contain any information about how children's services will assist with legal fees, then it is sensible to ask the social worker to confirm their position in writing.

### Privately funding legal advice

Instructing a solicitor for advice can be expensive. Solicitors' fees cover the cost of them providing advice (in person, by phone, by email), preparing the case, speaking with the other parties' lawyers and representation at court. The costs can quickly run into thousands of pounds, so it is important to discuss with the solicitor at the first meeting what the costs are likely to be. They will often prepare a cost case plan, outlining estimated costs for different stages of the case. Most solicitors will be happy to work flexibly, to provide advice and assistance in relation to particular aspects of the case, as and when required. For example, an initial advice meeting or to represent the prospective special guardian if the case becomes more complicated, for example if the parents do not agree that a special guardianship order should be made.

<sup>12</sup> See [Chapter 4 of Family and Friends Care: Statutory guidance for local authorities](#)



### Acting as a litigant in person

Relatives and friends who are made a party to care proceedings can participate in the case even if they don't have a solicitor. Someone in this situation is often referred to as an unrepresented party or as a 'litigant in person' – this just means they do not have a solicitor. They will need to correspond with the other lawyers themselves and speak in court. Going to court alone may sound scary, but judges, magistrates and the court staff will do their best to make the experience as easy as possible.

The following information and organisations may be helpful to litigants in person:

- [Information for people representing themselves in court](#) (produced by the Bar Council, the organisation which represents barristers)
- Self-representation guides available on the [Advice Now website](#)
- [Support Through Court](#) – a free service across England and Wales, which offers support and guidance before, during, and after court.
- [We are Advocate](#) – A charity which finds free legal help from barristers

## 12. How does the Family Court make a final decision in care proceedings?

### Issues resolution hearing

Once the court has gathered all of the evidence it needs, including assessments of relatives and friends, as well as of the parents, it will list an issues resolution hearing. The issues resolution hearing is used to see whether the [parties](#) can reach agreement on long-term plans for the child. If the parties do not agree on the plan for the child, the hearing will be used to work out exactly what issues the court needs to decide.

The issues resolution hearing should take place after:

- All assessment work is complete. This includes all parenting and expert assessments and any assessments of potential family carers for the child.
- Children's services have put into a written [care plan](#) and supporting social work statement as to what they think the right long-term plan for the child is. The care plan should be a detailed plan which covers how all a child's current needs will be met and the arrangements for the child's care now and in the future.
- The parents have responded to the plans and other documents in their own written statements.
- The children's guardian has prepared a final report explaining what they think the right long-term plan for the child is. This is called the guardian's final analysis and recommendations.

If the parties agree about what is best for the child, the issues resolution hearing might be the last hearing. If the parents or child's guardian do not agree with the care plan that children's services propose for the child, then a date will be set for a final hearing. How long a final hearing will last, will depend on how much is agreed about the plans for the child and on how many people are involved in the case.



### Final hearing

If things have not been agreed at the issues resolution hearing, a final hearing will take place. The final hearing is when the Family Court will make final decisions about:

- The best long-term care arrangements for the child.
- Who the child should have an ongoing relationship with and stay in touch with. This includes who the child should see, how often and other such arrangements. This is often referred to as contact arrangements.
- Whether any kind of court order is needed to put those arrangements in place. For example, a special guardianship order and possibly a child arrangements order to set out the arrangements for the child to spend time with their parents.

At the final hearing, the court will have all the relevant paperwork about the case. This will include statements from the parents, assessment reports (including the special guardianship assessment) and the final care plan for the child. The judge or magistrates dealing with the case should have all the relevant documents about the case. These will have been put together in one file called the court bundle. This could be an electronic file or a hard copy. All the parents involved in the case will have a copy of the bundle.

### Oral evidence

The court is likely to hear oral evidence from some or all of the parties and may need to hear from any experts who did assessment work with the child or their family. Oral evidence is the chance for the different people involved in the case to be asked questions. They can then explain their point of view or their recommendations. So, parents or potential carers may have to speak in court and answer questions.

### Submissions

Towards the end of the hearing, the [parties'](#) lawyers will make speeches to the judge. These are called submissions. It is a chance to explain again what each party involved in the case thinks is best for the child and why, and highlight to the judge what the most important information and evidence in the case has been.

### Judgment

If the case has been heard by a judge, they will give their decision in a judgment. This is a speech in which the judge summarises all the key information about the child and family. In it, the judge explains the evidence they have listened to and considered. It states what decision the Judge has reached and the reasons for their decision. The judge will usually give their judgment verbally, but a copy may also be provided to the parties in writing. After the hearing, the judge may publish their judgment online. If they do this, they will change the names of the family members and children involved so no one knows who the case is about.

### Magistrates Reasons

If the care proceedings have been dealt with by magistrates, they will give their decision in writing in a document called Justices Reasons. A copy of the Reasons should be given to all of the parties.

If the special guardianship order is granted, then the sealed court order will be sent to all parties a couple of weeks after the final hearing.



## Where to get further information

### From Family Rights Group

- For other information and advice about kinship care, including different types of kinship care arrangement visit our [Kinship Carers](#) page
- This advice sheet is one of a series about special guardianship. Other advice in this series and on kinship care are available on our [Advice sheet](#) page. These advice sheets are:
  - 2a) Special guardianship: an introduction
  - 2b) Special guardianship: what does it mean for birth parents?
  - 2c) DIY special guardianship orders: care proceedings
  - 2d) DIY special guardianship orders: private law proceedings
  - 2e) Practical and financial support for special guardians
  - 2f) DIY child arrangements orders: information for kinship carers
  - 2g) Becoming a kinship foster carer: the process
  - 2h) Welfare benefits for kinship carers
  - 2i) The Education system in England: information for kinship carers.
- Our [Top tips and templates](#) page also includes a number of letters that kinship carers can use to communicate with children's services about their entitlement to support or to request assessment
- You may want to visit our [Useful links page](#). This lists information and contact details for over 70 organisations that may be helpful to families, including kinship carers
- Special guardians and prospective special guardians in need of further advice about the support for special guardians and the children they care for, can:
  - Post a question on our [Kinship Carers Forum](#) and receive advice from one of Family Rights Group's expert advisers. If they need further or more detailed advice, then:
  - Contact us – Family Rights Group's specialist legal and practice advice line on 0808 801 0366 (the advice line is open Monday to Friday, from 9.30am to 3pm (excluding bank holidays)).
  - Take legal advice from a solicitor. Find a solicitor who is a specialist in children law. Or who has [Children Law Accreditation](#). To find a solicitor, search using the 'how to find a solicitor' function on the [Law Society website](#). And see our Working with a solicitor guide on our [Top tips and templates](#) page for more information about finding and working with a solicitor.



Advice line 0808 801 0366 **Mon-Fri** 9:30am-3pm



Get more support on our forums



[www.frg.org.uk](http://www.frg.org.uk)

### From other organisations

Organisation	Contact Information
<p><b>Citizens Advice</b></p> <p>An independent organisation providing free, confidential and impartial advice. Their goal is to help everyone find a way forward, whatever problem they face.</p>	<p>Website: <a href="https://www.citizensadvice.org.uk">https://www.citizensadvice.org.uk</a></p> <p>Telephone:</p> <ul style="list-style-type: none"> <li>For England telephone: 03444 111 444</li> <li>For Wales telephone: 03444 77 2020</li> <li>Text Relay users should telephone: 03444 111 445</li> </ul>
<p><b>Civil Legal Advice</b></p> <p>A free and confidential advice service run on behalf of the government. It provides information directly to the public on a range of common legal issues, helps people find out if they are eligible for free legal advice from a solicitor and helps them find a solicitor.</p>	<p>Website: <a href="https://www.gov.uk/civil-legal-advice">https://www.gov.uk/civil-legal-advice</a></p> <p>Telephone:</p> <ul style="list-style-type: none"> <li>0345 345 4345 - Monday to Friday, 9am to 8pm and Saturday 9am to 12.30pm</li> <li>Text 'legal aid' and your name to 80010 to ask Civil Legal Advice to call you back. This costs the same as a normal text message.</li> </ul>
<p><b>Coram Children's Legal Centre</b></p> <p>Its Child Law Advice Service provides legal advice and information on areas of children and family law.</p>	<p>Website: <a href="https://www.childrenslegalcentre.com">https://www.childrenslegalcentre.com</a></p> <p>Email advice: <a href="https://childlawadvice.org.uk/email-advice-family">https://childlawadvice.org.uk/email-advice-family</a></p> <p>Telephone:</p> <ul style="list-style-type: none"> <li>0300 330 5480 – Monday to Friday, 8am to 6pm</li> </ul>
<p><b>The Law Society of England and Wales</b></p> <p>The Law Society is the independent professional body for solicitors. Its website hosts the 'Find a Solicitor' tool. This is a free service for anyone looking for information about organisations or people providing legal services in England and Wales that are regulated by the Solicitors Regulation Authority (SRA).</p>	<p>Website:</p> <ul style="list-style-type: none"> <li>Homepage: <a href="https://www.lawsociety.org.uk/">https://www.lawsociety.org.uk/</a></li> <li>Find a Solicitor: <a href="https://solicitors.lawsociety.org.uk/">https://solicitors.lawsociety.org.uk/</a></li> </ul> <p>Email: <a href="mailto:info.services@lawsociety.org.uk">info.services@lawsociety.org.uk</a></p> <p>Telephone:</p> <ul style="list-style-type: none"> <li>Tel: 020 7242 1222</li> <li>Minicom: 0870 600 1560</li> </ul>
<p><b>Support through Court</b></p> <p>A free service across England and Wales, offering support and guidance before, during, and after court.</p>	<p>Website: <a href="https://www.supportthroughcourt.org/">https://www.supportthroughcourt.org/</a></p> <p>Telephone: 03000 810 006 ( Monday to Friday, 9.30am to 4.30pm)</p>
<p><b>We are Advocate</b></p> <p>A charity which finds free legal advice from barristers.</p>	<p>Website: <a href="https://weareadvocate.org.uk/apply-for-help.html">https://weareadvocate.org.uk/apply-for-help.html</a></p> <p>Email: <a href="mailto:enquiries@weareadvocate.org.uk">enquiries@weareadvocate.org.uk</a></p> <p>Online application form: <a href="https://www.tfaforms.com/4811553">https://www.tfaforms.com/4811553</a></p> <p>Telephone: <a href="https://www.tfaforms.com/4811553">https://www.tfaforms.com/4811553</a></p>

The information contained in this advice sheet is for guidance only. Every effort is made to ensure it is correct at time of publication. But it should not be used as a substitute for legal advice or for individual advice about your case. Please note that the information is about the law in England only.