



Department
for Education

Consultation response form

Consultation closing date: 18 September 2015
Your comments must reach us by that date

Special guardianship review

If you would prefer to respond online to this consultation please use the following link: <https://www.education.gov.uk/consultations>

Special Guardianship was introduced in 2005 as a new permanence option for children. At this time, it was considered that it should meet the needs of a significant group of children; these included mainly older children who had become separated from their birth family children already living with a relative or foster carer, and groups such as unaccompanied asylum-seeking children who may need a secure legal basis without breaking the strong attachment they may have with their family abroad. However, the use of special guardianship has changed and local authorities and others have told us that it is now being used for younger children - data shows a significant increase in the number of children aged under one being given a special guardian – and that the assessment process is not always sufficiently robust. The call for views will look at these issues and gather views on how to address concerns.

We invite your views on:

- how the use of special guardianship has changed, since its introduction in 2005
- the assessment process
- the advice and support for special guardians
- examples of best practice

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes, primarily the Freedom of Information Act 2000 and the Data Protection Act 1998.

If you want all, or any part, of your response to be treated as confidential, please explain why you consider it to be confidential.

If a request for disclosure of the information you have provided is received, your explanation about why you consider it to be confidential will be taken into account, but no assurance can be given that confidentiality can be maintained. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

The department will process your personal data (name and address and any other identifying material) in accordance with the Data Protection Act 1998, and in the

majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Please tick if you want us to keep your response confidential.	<input type="checkbox"/>
Reason for confidentiality:	

Name: Family Justice Council	
Please tick if you are responding on behalf of your organisation.	<input type="checkbox"/>
Name of organisation (if applicable): Family Justice Council	
Address:	

If your enquiry is related to the DfE e-consultation website or the consultation process in general, you can contact the Ministerial and Public Communications Division by email: consultation.unit@education.gsi.gov.uk or by telephone: 0370 000 2288 or via the Department's ['Contact us'](#) page.

Please tick the box that best describes you as a respondent.

<input type="checkbox"/> Local authority	<input type="checkbox"/> Special guardian	<input type="checkbox"/> Young person
<input type="checkbox"/> Lawyer	<input type="checkbox"/> Director of Children's Services	<input type="checkbox"/> Academic
<input type="checkbox"/> Parent/Grandparent or other relation	<input type="checkbox"/> Social work practitioner	<input type="checkbox"/> Member of judiciary

Please specify:

The Family Justice Council is an advisory non-departmental public body. It has a diverse, multidisciplinary membership comprising representatives who work, or have an interest, in the family justice system. As such, **the responses below reflect different members' perspectives which may not represent the views of the Council as a whole.**

When special guardianship is right for children: the legal and practice framework

Why are we asking questions about the legal and practice framework?

The law is clear that a special guardianship order (SGO) should be made where it is in the best interests of the child, taking into account the welfare checklists in The Children [1989] and Adoption and Children [2002] Acts.

SGOs can be (and are) made in respect of children in very different circumstances. For example, SGOs are made in respect of children subject to care proceedings, or for whom the alternative may be to enter care proceedings, and in these cases the Order often leads to a change in where children live and who cares for them. SGOs are also made in respect of children where the local authority has not been previously involved, or who are settled in a kinship or foster care placement for a long period of time, and can involve no change in a child's home or primary carers – the child continues to live with the people they have lived with for some time, but with a change in legal status. SGOs can also be made in respect of children up to 18.

These situations are very different, and all require careful consideration - with the child, and their welfare both now and in the future, at the heart of decisions. The legal framework is, however, the same. We are interested to hear your views on whether there are any changes needed to the legal and/or practice framework in which special guardianship decisions are made, or whether the current framework works well.

1 Does the legislation, regulations and/or statutory guidance relating to special guardianship need to be changed? If so, how?

Comments:

Member 1: The legislation, regulations and statutory guidance relating to special guardianship may need to be amended. There is a general view that the way in which Special Guardianship Orders are used has changed from that intended in the Statutory Guidance and that the rate of change seems to have increased over the past two years. The use of SGOs has evolved away from the original intention of use for children who had existing, settled relationships with their carers. It may be necessary to consider amending the guidance so that where a case is to conclude in 26 weeks and the child has not yet been placed (or only recently been placed) an opportunity to test the arrangement is provided prior to an SGO being made.

Special Guardianship Orders now represent an increasing proportion of the outcomes of Care Proceedings. The impact of case law in relation to adoption has produced the unintended consequence of a reduction in the number of cases where an adoption placement order is made and a corresponding increase in SGOs. There is a widespread perception that re B and re B-S have raised the threshold for adoption placement orders. This perception seems to remain in place in spite of repeated attempts to reinforce an understanding that the threshold has not changed. There is also a perception that the bar for SGOs has been lowered and that orders are now made to family members who would not previously have been deemed suitable. There is also some anecdotal evidence of SGOs being made to people with whom the child had no pre-existing relationship whatsoever; with orders being made to friends of relatives who had barely met the child.

This increase in SGOs seems to have partly occurred as a result of Local Authority Care plans varying towards the end of proceedings, with cases where the original plan was for adoption being replaced with a care plan for a Special Guardianship Order. As cases of this nature have been perceived by Local Authorities to have been becoming increasingly frequent, there now appears to be a developing trend of Care Proceedings being initiated, by some LAs, with an intended Care Plan of SGO when the plan may previously have been for adoption.

One member of the Family Justice Council reports that concerns have been raised by some interest groups that Special Guardianships have been awarded to long term foster carers who have no interest or concern in preserving the link between the child and their birth family. It appears that (anecdotally) before the public sector cuts, some foster carers applied for SGOs (as opposed to staying a foster carer or becoming an adoptive parent) as this would provide them with greater financial and practical support from the local authority. However, when birth families have then sought to maintain or re-establish links with a child under an SGO awarded to their foster carer problems

have been encountered. In the post cuts world, local authorities have been less than interested in assisting the SG and/or the birth parent when they have tried to manage the children's relationship with their parents and their development generally.

Member 2: SGOs are being used in a myriad of different ways that was not envisaged by the original legislation. This is a positive. In some cases SGOs are made where children have an established relationship with the SG, in other cases not. SGs are used and welcomed by many in the Muslim community where adoption (as legislated in England and Wales) is not always recognised or is culturally unrecognised. Anecdotally there is a significant increase in SGOs made within this community. Further SGOs are made in cases where family members come forwards to care for a relative where previously local authorities were rigid in that a child under 2 years MUST be adopted even by a family member. With the introduction of SGOs Local Authorities and Courts are open to SGOs being made for younger children where appropriate, thus recognising the real family relationships. This flexibility can only be in the child's benefit.

What is clear is that given the pressure to complete cases within 26 weeks on occasion SGOs are being made where there have been short and rushed assessments. This in turns results in the SG support plan being a superficial document and the only item of support considered is financial. This fails to understand that children who are made subject to SGOs are often very vulnerable by reason of their past experiences of being parented and are old enough to have very clear memories of those experiences. Significant thought should be had for all SGOs to be tested under interim orders or longer assessments which would make these cases last longer than 26 weeks.

2 In your experience, are practitioners clear and consistent about the factors to take into account when considering whether an SGO is the most appropriate order for which to apply?

Comments:

Member 1: Given the range of circumstances in which SGOs are now made, it may be necessary for some standardisation of assessment format and the development of guidance on the content of assessment.

There is generally no issue with social work practitioners understanding of the factors which need to be taken into account in assessing suitability for special guardianship; there is however are issues in terms of the time available to undertake a sufficiently comprehensive assessment and the wide range of contexts in which a special guardianship assessment has to be completed. There has been a particular, increasing tension with regard to the circumstances in which a Special Guardianship Order is considered to be the most appropriate order for which to apply in some cases. The tension arises where the care plan evolves into a plan for special guardianship late in the care proceedings process.

Timescales for completion of special guardianship assessments can become very truncated in order to comply with the compression caused by the need to complete proceedings within 26 weeks. A similar issue exists with the assessment and approval of potential Family & Friends Foster Carers in some care proceedings cases. It seems that in many cases, irrespective of the efforts made in the pre-proceeding stage, late arrival family members potentially derail the timescales for proceedings. A recurring issue has been noted that family members will not put themselves forward until parents have been ruled out and that parents are reluctant to nominate family members as prospective carers at an early stage in the belief that to do so may compromise their own prospects. There is also a view that the average age of children for whom SGOs are made has reduced significantly in the past two years as a result of a reduction in the numbers of children who may previously have been adopted at a very early age.

The tension between the perception that adoption can only be the plan when nothing else will do and what constitutes good enough parenting from a family and friend foster carer or special guardian is contributing, considerably, to the increases in SGO's and in Placements with Parents on Full Care Orders and to the decline in numbers of Placement Orders. There is considerable anecdotal evidence of courts inviting Local Authorities to revisit their plan for an adoption placement order and to further consider an SGO. This often seems to be in circumstances when an assessment has been carried out which ruled out prospective SGO carers but where the view of the Cafcass Guardian is that they may be suitable. There is a particular area of concern that SGOs are being used where the care provided to a child is just about OK at the point of making the order but is unlikely to provide a good level of care to the child throughout the duration of their childhood with an increasing likelihood that the placement may break down as the child gets older; at which point the range of options for the child may be much more limited and may not include any legal permanence options.

Member 2: There is much social work practice that needs to be made better. In particular some social work practitioners seem to be using SGO as an alternative to s20 accommodation or instead of issuing care proceedings advising family carers who have cared for children under s20 agreements they should issue an application for an SGO. This results in public law issues being litigated in the private law sphere and the local authority and the children not being made parties.

The Courts and the lawyers are clear about what factors to take into consideration but frequently those factors have been addressed in the evidence put before the Court. As SG assessments are sometimes ordered, mid proceedings the assessments can often become very truncated and are often very cursory. Anecdotally assessments have been ordered by the Court to be produced in 4 weeks. DBS checks, which take significantly longer, are awaited and the final hearing takes place as soon as they arrive.

Assessment process: Deciding whether an individual can become a special guardian

Why are we asking questions about the assessment process?

Local authorities assess prospective special guardians to explore whether they are able to meet the child's needs. Regulations set out what the report should consider. LAs may be assessing a close relative who already has a relationship and history with a child or they may be assessing someone who does not know the child very well or at all. We are interested to hear your views on how well assessment for special guardians

3 Could the assessment processes for determining whether a prospective special guardian is suitable be improved? If so, how?

Comments:

Member 1: Special Guardianship Assessments work well if there is sufficient time available for the assessment to be completed properly. The Special Guardianship Regulations state that an applicant for a special guardianship order must give three months' written notice to the local authority of their intention to apply; in practice, within care proceedings SGO assessments are frequently required to be completed in much shorter timescales. For prospective adopters, the assessment of their suitability is completed within a 6 month period. Because of care proceedings timescale targets, Local Authorities can be directed to file an SGO assessment in as little as four weeks. It is clear that many Local Authorities are at breaking point in terms of their capacity to complete assessments within the timescales that are frequently directed and for the number of family members for whom assessments are directed.

One member of the Family Justice Council reports that in light of the pressures to 'get through' public law proceedings in 26 weeks, it has been reported by a number of children and family groups that some local authorities have been reluctant to undertake suitability assessments for potential Special Guardians in care proceedings unless the individuals / carers are identified early on.

It has been alternatively reported that when assessments are done, they are not as thorough as they once were and may make rash summary judgments as the social workers have had insufficient times to consider the matter appropriately; instead, it appears that the pressure from within their local authority is to move to a plan for adoption or long term foster care rather than properly investigating potential Special Guardians.

The member also states that a number of potential Special Guardians have reported that they feel if the process had been more robust and a social worker was willing to engage with them (even when they have been identified as a potential carer late on in proceedings) their applications would have been better considered. (The member comments that this point may be tainted by sore feelings from those who were not

successful in becoming Special Guardians).

Member 2: The Special Guardian support package assessment should also be standardised and should always include provision for SGs to seek support from the local authority including therapeutic support for the children recognising that they are particularly vulnerable as a result of their early life experiences and not relying on GP referrals through the NHS.

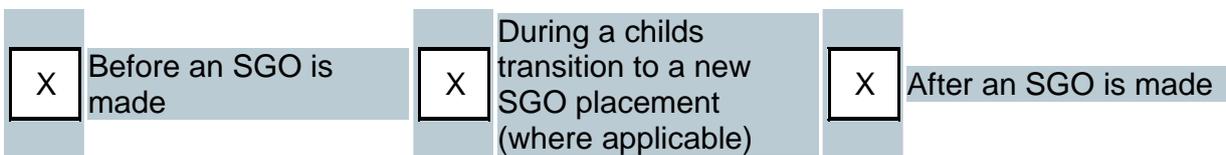
Providing the right support for special guardians and children

Why are we asking questions about support?

For a SGO to be successful, both the child or children and the guardian(s) and the birth parents may need support. As a minimum, the special guardian will need to understand their new legal duties and responsibilities and what an SGO means; and birth parents also need help to understand what the SGO means for them and to manage their expectations about their future relationship with their child. Where an SGO entails a child or children moving to a new home, there may be specific things that could support that transition to be successful. In addition, many children who leave care on an SGO, or who may be placed under an SGO as an alternative to care, may need support throughout their childhood to manage the impact of abuse or neglect in their early childhood, and their guardians may need support to care for them and protect their best interests. We are interested in your views on what advice and support is most important at each stage of being a special guardian.

4 What type of advice and support to children, special guardians, and birth parents do you think should be provided and when?

- Before an SGO is made
- During a child's transition to a new SGO placement (where applicable)
- After an SGO is made



Comments:

A Special Guardianship Support Plan should be developed as part of the SGO assessment process and should be as comprehensive as its adoption equivalent. This plan should not be static, but should be reviewed in the transition process and, at the request of the special guardian or subject of the SGO, at any point for the duration of the order. Local Authorities are required to provide SGO support for carers who are former foster carers but have discretion in other circumstances. There would be considerable resource implications if this discretion were removed.

There is an issue however of Local Authorities feeling forced to provide support to an SGO arrangement which was not their plan. There is an apparent tension between the Local Authority position in terms of what constitutes a realistic SGO placement which can be effectively supported for the duration of a child's childhood and what the court considers to be realistic enough to mean that adoption should be ruled out and that an SGO is appropriate.

One member of the Family Justice Council reports that in the last few years following a number of cuts to public sector funds, local authorities have cut the support services they provide to Special Guardians, or encouraged family members looking after Looked After Children to take responsibility under the auspices of a Residence Order and other private law provisions of the Children Act 1989. The consequence of this has meant that many Special Guardians have no access or entitlement to the support they and the children need further down the line.

Identifying good practice

Why are we asking about good practice?

The rate at which SGOs are used is highly variable between local areas; in addition, the research suggests that practice and children and carers' experience of SGOs can be very different. We know there is good practice out there, and we are interested in your views on what the best practice in special guardianship looks like so that we can support all practitioners to deliver this.

5 In your view, what constitutes good practice in enabling a special guardianship to be successful?

Comments:

It is critically important that there is sufficient time for a rigorous and comprehensive special guardianship assessment to be undertaken. The capacity of the special guardian to meet the child's needs for the whole of their childhood should be as comprehensively analysed as it would be in an assessment of prospective adopters. The assessment of prospective special guardians should include an assessment of the special guardian's ability to manage birth parent, sibling and wider family contact issues; with a particular focus on their ability to manage any risks that are presented by parents or other family members. The assessment should focus on both the short-term and long term risks in relation to any divided loyalty that the prospective special guardian may potentially experience. There should be a rigorous analysis of the prospective special guardian's parenting capacity and their ability to help a child to maximise their potential. The completed special guardianship assessment should be the subject of the local authority's legal permanence quality assurance process.

6 Please add any other comments/views below about your experience of special guardianship and how it could be improved, if at all?

Comments:

A member of the Family Justice Council reports that in the last 12 months, a number of organisations have noted a rise in enquiries from litigants in person about special guardianship applications. It appears that a number of local authorities, rather than engaging in care proceedings, are intervening to place children (often without s.20 agreements) with family members who are then advised by a social worker to apply to court for a special guardianship order. Many of these are not told they would qualify for legal aid or for the local authority to fund their application and so are left to their own devices. Worryingly, in one area, when a litigant in person asked the social worker for advice about the procedure and/ or how to get legal advice, they were told that the social worker did not know and they should contact the relevant legal advice charity to assist them.

It is felt that there is little information in the public domain (or provided by social workers) to assist such potential carers in court proceedings.