



Department  
for Education



**Adfam**

Families, drugs and alcohol

# **Special guardianship review**

**ADFAM RESPONSE**

**September 2015**

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.

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| <b>Please tick if you want us to keep your response confidential.</b> | <input type="checkbox"/> |
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| Reason for confidentiality:                                       |                                     |
| Name: Oliver Standing, Director of Policy and Communications      |                                     |
| Please tick if you are responding on behalf of your organisation. | <input checked="" type="checkbox"/> |
| Name of organisation (if applicable): Adfam                       |                                     |
| Address: 25 Corsham Street, London N1 6DR                         |                                     |

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 |

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| <p>Please specify:</p> <p>Adfam is the national charity working to improve support for families affected by drugs and alcohol.</p> |
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**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:

- A. The current 26 week Public Law Outline (PLO) requirement can be restrictive. Although it is important for the wellbeing of children that their future be decided as soon as possible, it can also prevent all avenues being explored appropriately and result in families feeling forced into decisions they are not ready to make. Consequently Adfam would like to see the possibility of it being extended.
- B. Legislation is vague regarding obligations on Local Authorities to provide support to Special Guardians. Whilst there are obligations to assess for support, some Local Authorities avoid providing it or limit the time for which they will provide it. Adfam would like to see a greater deal of clarity over exactly what Local Authorities are required to provide and a commitment from them to deliver this.

**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:

- A. Adfam runs a Kinship Care project based in Peterborough and focused around HMP Peterborough and consequently has a lot of experience of supporting kinship carers, some of whom have reported feeling forced into applying for an SGO, with some even suggesting they were told that if they do not the child will be adopted. Consequently they do not feel that they have the opportunity to make an informed decision.
- B. Kinship carers also report being told they would receive a certain level of support after the SGO is awarded, only to discover afterwards that it was limited to a finite period. This leaves families feeling emotionally and financially abandoned and can leave some in very difficult circumstances, which of course negatively impacts on the children involved.
- C. One supporter told us: *“Social workers lie and promise potential kinship carers many things to get them to sign SGOs for the kids, but in reality as soon as the SGOs are passed by the courts the Local Authority never bothers with the kids or carers again.”*

## **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:

- A. Assessment should be consistent between Local Authorities and practitioners.
- B. Suggestions of increasing the level of assessment to that of adopters/fosterers could result in families finding the assessment overwhelming and withdrawing. It may also result in loving family members who would provide a stable home to a child being rejected due to stringent standards rather than finding ways to support the child remaining within the family. These include, for example, ongoing support from Children's Services or other agencies, or a Family Group Conference to find ways other family members could support the child remaining within the family such as providing respite or being appointed a guardian in the event that the special guardian is no longer able to care for the child.

## **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

|   |   |  |
|---|---|--|
| <input checked="" type="checkbox"/> Before an SGO is made | <input checked="" type="checkbox"/> During a child's transition to a new SGO placement (where applicable) | <input checked="" type="checkbox"/> After an SGO is made |
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Comments:

**Before an SGO is made:**

- A. Birth families to have access to legal advice on the implications of an SGO being awarded.
- B. Prospective Special Guardians to have access to legal advice, including through legal aid. Some Local Authority Friends and Family policies may only entitle them to a leaflet, which is not sufficient for them to make an informed decision.
- C. Social workers to provide clear information to prospective Special Guardians around the options for themselves and the child so that they can make the best decisions for all involved. Kinship carers must not feel, as they often do, pushed into applying for an SGO under threat of the child being adopted out otherwise.
- D. Social workers to be frank and clear with families about support they are entitled to, what support will be provided and for how long after the SGO is granted. One family member told us: *"We had a hard time with children's services; they made a lot of empty promises to us about the support that we were going to provide."*
- E. Care plan to be set out for the family and child with clear information about the support the family can expect would be an appropriate way forward. One family member told us: *"We were assured that the support they offered us would stay the same to deal with the additional needs of the children and, importantly for us as we were already struggling; the money we received would not change, they said this would be honoured for two years. This was not so, as soon as we walked out of court after being granted the SGO, children's services did not help us deal with the children's difficult behaviour and we lost £100 a fortnight, leaving us without enough to live on. Basically they left us to it with no support, then came banging at the door when anything happened."*

**After an SGO is made:**

- A. Families to have ongoing access to support - many of the children have the same needs as 'looked after' children due to their previous experiences and it is vital that they and their carers have access to the support they need, not only financial but also practical and emotional. One supporter told us: *"I would like for all children in kinship care to be recognised as having the same difficulties regardless of the type of order in place. A child with a residency order deserves the same priority for a school place as a child under an SGO for example."*
- B. Special Guardians to have ongoing access to support around contact between the children they care for and birth parents. The emotional relationships between family members can often be strained, so managing contact can be extremely difficult. In addition, if there have been previous safeguarding concerns around the parents, the Special Guardians should have access to ongoing support around assessing appropriate forms of contact and arranging these in order to best protect the child. One supporter told us: *"I strongly believe that when a relative takes on a child, but are hopeful that the child will be able to return to the parent at some point, if social services back off and leave them to it, the Kinship Carers should be entitled to information about the parent's drug use in order to judge when the child could be safely returned or at least have unsupervised contact."*

**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:

- A. Clear and open communication from social workers in terms of the assessment and the support available to the family if the SGO is made.
- B. Families being given time and space to make the right choice for their family without feeling at all forced.
- C. Consistent, clear and appropriate support focused on the needs of families at all stages of the 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. Local Authorities need to have clear and up-to-date monitoring and information on the numbers of SGOs in their areas, and understand the reasons why the children are in the care of a family member or friend. This will help ensure that Special Guardians and children can access the right support and their needs are met. There should be a clear referral pathway between Special Guardians and external support. For example, if a child is in the care of a Special Guardian due to parental drug or alcohol use, the child and Special Guardian should be referred into the young persons' and family drug and alcohol support service.
- B. Adfam is an infrastructure body, supporting services and practitioners working with the families of drug or alcohol users. As part of its ongoing regional development work, Adfam facilitates forums across the country for practitioners to come together and share best practice, skills and information. The West Midlands Regional Forum has been looking at the issue of Kinship Care as a whole and sent Freedom of Information requests to all Local Authorities in the West Midlands. From the information received, it was clear that only three of 14 Local Authorities had information on how many Kinship Carers there were in their area, and six of 14 knew how many children were in Kinship Care. The lack of monitoring and information around this group is worrying for this group of people who are looking after vulnerable children. Local Authorities need to hold this information to ensure that their needs are being met appropriately. One

family's story was used to illustrate the problems faced by kinship carers and some of their quotes have been used in this response.

- C. Adfam is also piloting a support service for kinship carers based at HMP Peterborough and working with families with connections to the prison or with other criminal justice involvement. To inform the development of the project, Adfam consulted kinship carers who were members of a closed Facebook support group. The results showed high levels of unmet need among kinship carers, particularly in terms of financial and emotional support. Quotes from some of these carers have been used in this response.

Thank you for taking the time to let us have your views. We do not intend to acknowledge individual responses unless you place an 'X' in the box below.

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|---------------------------------------|--|
| <b>Please acknowledge this reply.</b> |  |
| Email address for acknowledgement:    |  |

Here at the Department for Education we carry out our research on many different topics and consultations. As your views are valuable to us, please confirm below if you would be willing to be contacted again from time to time either for research or to send through consultation documents?

|   |                             |
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| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
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All DfE public consultations are required to meet the [Cabinet Office consultation principles](#)

The key consultation principles are:

- departments will follow a range of timescales rather than defaulting to a 12-week period, particularly where extensive engagement has occurred before
- departments will need to give more thought to how they engage with and use real discussion with affected parties and experts as well as the expertise of civil service learning to make well informed decisions
- departments should explain what responses they have received and how these have been used in formulating policy
- consultation should be 'digital by default', but other forms should be used where these are needed to reach the groups affected by a policy
- the principles of the Compact between government and the voluntary and community sector will continue to be respected.