



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"/>
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Reason for confidentiality:

Name: Elaine Dibben

Please tick if you are responding on behalf of your organisation.

X

Name of organisation (if applicable): CoramBAAF Adoption and Fostering Academy

Address: CoramBAAF, 41 Brunswick Square,
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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 checked="" type="checkbox"/> Social work practitioner	<input type="checkbox"/> Member of judiciary

Please specify:

CoramBAAF Adoption & Fostering Academy is the leading membership organisation dedicated to improving outcomes for children and young people in care by supporting the agencies and professionals who work with them.

CoramBAAF focuses on supporting and developing all areas of permanency in the UK - adoption, fostering, kinship care as well as returning children to their parents – and the legal Orders that frame these.

CoramBAAF provides and develops the infra-structure of family placement services such as forms and practice guidance, disseminates research, shares best practice and offers publications, training and support to agencies and professionals to develop their skills and knowledge. This includes social workers, those working in health, the law and other related areas of activity. CoramBAAF also offers resources for those caring for children.

CoramBAAF is part of the Coram Group of charities which has been advancing the welfare, education and rights of children in the UK for over 275 years.

CoramBAAF, when it was previously BAAF, was a partner with York University on the Investigating Special Guardianship research published in 2014 and promoted its findings through a conference in 2014.

CoramBAAF runs a Special Guardianship Interest Group which is held 6 monthly for social worker managers and practitioners and has been meeting since 2009 and is an active member of the Kinship Care Alliance. . In preparing this response we convened consultation events in London and Bristol which were attended by or contributed to by representatives from 32 LAs, FRG, 1 VAA, NALGALRO and Adoption UK. We also incorporated the views from our Health Advisory Group which includes Medical Advisers, Paediatricians and other health professionals.

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 1989 Children Act.

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: We have highlighted proposals throughout this consultation response but the following are key areas we would want to highlight;

- The use of Special Guardianship Orders (SGOs) has developed over the last 10 years in a way that has shifted considerably from the original stated policy objectives. We believe there should now be a detailed, informed review including evidence from social workers, lawyers and the courts on whether the SGO as it is currently used remains a private law application. If it does, then we need to ensure greater clarity for all parties about its use as a private law order within care proceedings. Urgent consideration should be given to the power of the court to make a SGO during proceedings without an application having been made given the significant implications of the Order once made.
- We believe there should be a regulatory requirement for a period of residence to establish the relationship and care arrangements between the Guardian and the child before an SGO is made, similar to the requirement for an adoption order. As a minimum this should be for 10 weeks bringing it in line with adoption placements but given the complexity of SG placements including contact arrangements and adjusting to assuming a greater level of parental responsibility we feel a longer period may be justified.
- The current Statutory Guidance needs significant revision to include further guidance on the permanent status of the order, the areas that need to be covered in assessments, and an exploration of 'good enough' parenting given the particular and complex circumstances of many kinship carers. It should also incorporate recent case law, guidance on financial support, strengthening the current parallel provision of support with adoption to SG families, cross border working and international cases. We would be happy to be part of any working group convened to look at this.
- There should be a requirement for LAs to fund prospective SGs to access independent legal advice to address the concern reported in research that SGs are not fully aware of all the implications of assuming the overriding parental responsibility granted by an SGO. We know this is already the practice in some local authorities.
- There should be a national framework for financial support to SGs to provide clarity for LAs and SGs rather than the current 'postcode lottery'.
- Whilst there has been recognition of the need to include SGs and previously looked

after children placed under an SGO in entitlements to school places, pupil premium etc. there are still areas of disparity e.g. access to Statutory Leave and Pay for SGs in line with adoption. There needs to be further policy input to support SGs with the negative impact from other policy areas e.g. an exemption for SGs from the benefits cap and 'bedroom tax'

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:

From our discussions and examples provided to us we don't believe that childcare social workers are all clear or consistent when considering their use of Special Guardianship as a permanence option for children. We feel there are a number of factors affecting this –

- a lack of understanding of the permanent nature of an SGO - fully advising, providing information and preparing an SGO applicant is as important as it is in adoption even where there is an existing relationship and/or the child is already placed.
- a lack of understanding and awareness of the significance of SGO's as a private law order
- policy / practice expectations from senior managers where the objective is to reduce the number of looked after children or period of time spent in care. There is a view that care planning is now weighted towards SGO's which does not allow for consideration of the child and family's individual needs or proper use of the balance sheet in determining the right order for the child and family.
- There is a perceived lower threshold to be applied than in Placement Order applications - making it easier to make a SGO than a Placement / Adoption Order. This is in spite of the Guidance saying the Welfare Checklist from the 1989 should be used.
- social workers not feeling confident in court to set out their 'expert' view so are prone to pressure from guardians, lawyers

Proposals

- We believe that the SG Statutory Guidance needs to be substantially revised making use of relevant sections of the Family and Friends Statutory Guidance 2011, restating the requirement for every LA to have a policy on family and friends care (which may need to be included in regulations to ensure compliance) and requiring a comprehensive training programme for childcare social workers on permanence planning to facilitate their understanding and practice around special guardianship.
- We would suggest the government needs to encourage greater use of Family Group Conferences (FGCs) led by qualified and experienced facilitators to enable family members to be identified early in proceedings. This should include a wider exploration than just those family members proposed by the birth parents who may not always identify the most appropriate person and guidance needs to be clear about where parental rights to confidentiality fit into this.
- We would support the development of a universally recognised format for viability

assessments which is accepted by the courts. CoramBAAF is working to develop this in conjunction with Family Rights Group (FRG) other members of the Kinship care Alliance,, LAs and the MOJ and court service. We believe the need for viability assessments should be included in regulations with an accompanying schedule for what information is required

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:

- The assessment process should usually start with a viability assessment that measures strengths and vulnerabilities and explores any safeguarding risks or concerns. Where this is done well it can then inform the full assessment.
- We are concerned about reports from LAs of the short and unrealistic timescales placed on social workers to complete full assessments. The worst examples were court imposed timescales of 3-4 weeks. The 3 month notice period is often waived in Care Proceedings and we believe there needs to be a restating of a minimum timescale for completing these reports.
- LAs report concerns about potential SGs not receiving full information about the circumstances leading to the child needing permanence and about the child's needs. This may be because expert assessments are still being completed within care proceedings alongside the SGO assessment, finding of fact hearings are still awaited, concerns or confusion about data protection requirements which prevent childcare social workers from providing full disclosure. However it is essential that SGs are provided with full disclosure (as required for prospective adopters) so they are not disadvantaged in making their decision to apply for an SGO without a full understanding of what they are committing to but also to help inform the social worker's assessment of how they can meet the child's needs.
- Assessors need to be trained and skilled in helping SGs to consider the 'worst case scenarios' which may be presented by a parent's challenging behaviour, children attempting to return home, children who may have attachment difficulties as a result of

the abuse or harm, erratic parental behaviours, possible future pregnancies etc.

- These are often the most complex placements because of pre-existing relationships with birth parents, which often need to change for a child to be safely placed. Conflicts of loyalty need to be carefully explored within the assessment.
- We recognise there are different issues when assessing close family members with an existing relationship where the child may already have lived or now be living and prospective carers who are previously not known to the child and so are more like 'stranger placements. However whilst recognising that there may need to be a different focus in the assessment we believe the overriding concern is that assessments need to be **robust** with workers being given sufficient time to complete the more complex aspects of assessment of family relationships and dynamics that need to be addressed to safeguard children post order..
- Where there is a pre existing relationship then social workers need to consider a balancing of issues – e.g. the importance of existing attachments and relationships against areas where some aspect of the application does not meet required minimum standards or there are potential safeguarding issues
- Assessments must be child focussed, need discussion about what is 'good enough' when looking at re-parenting children who have experienced trauma, neglect and abuse, balanced with provision of support and how this may address some areas of concern
- All prospective kinship carers should undergo a comprehensive health assessment so that there is a good understanding of health risk, in order to offer relevant health promotion and to consider ways to support the placement.
- Kinship carers should be offered the opportunity to meet with the Medical Adviser prior to agreement of the placement so that they can obtain a full understanding of the child's health history and the implications for their future, and consider how they will be able to meet the child's needs. There is often the assumption that family members will know the health history but this is often not true, and even if known, they may not appreciate the implications. Additionally, they may not be aware of the impact of trauma and loss.
- Some LAs use some form of scrutiny through a panel – Leeds Herts, Coventry to ensure quality assurance.
- Some LAs experience difficulties in getting courts to accept formats other than writing to the schedule
- Further complexities raised when making international placements

Proposals

- That the child is the focus of all considerations leading to an SGO.
- There is a need to review the current Schedule under Regulation 21 to ensure it addresses the permanent nature of the order, the complexities of parenting traumatised children, managing family relationships and any resulting conflict and sufficiently addresses safeguarding concerns
- Enhanced DBS checks should be mandatory. There is real concern that in some cases Judges have refused to wait for DBS information to be received and made the SGO when there are potential safeguarding issues highlighted by the LA's SG assessment
- A requirement for prospective SGs to receive full disclosure about the child and their background history
- A requirement for prospective SGs to be offered preparation/ training about their role

with guidance on the areas that should be covered.

- That information and history on the child is prepared made available and equivalent to that in adoption.
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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

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

Comments:

- As stated earlier there should be access to advice and guidance to both SGs and birth parents so they have a clear understanding of the benefits and issues that are likely to arise from having an SGO which takes account of the specific circumstances relating to the child concerned.
- Birth parents are also entitled to support services but this is an area of provision which is lacking and seldom offered as routine. There is no equivalent to the requirement for provision of independent counselling for birth parents where adoption is the plan but this is a permanence order and there are often ongoing support needs identified for birth parents around contact issues as well as adjusting to the changes in their legal status once an SGO is made.
- There is concern about the extent to which discretion is used to provide support to families who apply for an SGO where the child is not looked after but was at risk of care if the placement wasn't made.
- There is a clear framework for SG support set out in Regulations but this is not adhered to or applied consistently across LAs. This is partly due to the fact that it was set up to mirror the provision of adoption support but without sufficient consideration of the different circumstances of these placements and knowledge of how the use of SGOs would develop.
- There needs to be clearer guidance about how support plans are developed with prospective SGs prior to the order and then subsequently reviewed. As with adoption support plans there needs to be input from those with specialist knowledge of family and friends carers and the issues they face. The SG Support plan should cover all aspects of need - promoting positive outcomes (education + health) - access to ongoing support including finance - contact with birth family - and crucially a contingency plan if there are difficulties.
- Health services for SG carers need to be commissioned, and our Health Group members report that many areas lack appropriate arrangements for important health services for children on an SGO.
- We have been given some examples of support groups and training being offered to SGs (see below) but more needs to be put in place. Some LAs have struggled to establish groups due to lack of take up. Others have linked with other LAs through consortium arrangements with varying success.
- Contact can be a major source of stress and risk to placement stability and more guidance is needed for social workers and courts about how this can be set up in a way that supports rather than threatens the placement. There is concern about how child focussed these arrangements are when they become the subject of negotiation in court proceedings. Some agencies have made good use of contact centres or mediation services in their area to manage and support contact arrangements but these services are not available in all areas.
- Financial support remains an area of confusion with differing financial arrangements across local authorities leading to a postcode lottery for SGs and for some LAs expensive court cases to resolve disputes. Regulations and guidance need to be updated in the light of case law but there was also support for a national framework of

allowances to be agreed and implemented.

- Children who have been looked after should have a life story book to help explain and make sense of their journey to an SGO – SGs also need help and support in sharing difficult stories particularly where there are having to explain the actions of close family members and adopters are expected to take over the 'ownership' of this when a child is placed.
- The children often need therapeutic input, sometimes there is an urgent need which could be identified prior to the SGO but in other cases children will need time to settle into their new family and adjust to contact arrangements etc.

Proposals

- There should be a requirement for information on all aspects of support to be provided to prospective SGs – similar to the Adoption Passport.
- There was overwhelming support from those agencies we consulted with for extending the remit of the Adoption Support Fund so it can be used to support children in SGO placements. The children being placed with SGOs also require access to therapeutic support to deal with their early life experiences and the support needs to recognise the added complexity introduced by their ongoing relationships with birth family members through contact arrangements.
- The sector would benefit from a standard proforma for assessing and creating an SGO support plan that would then link into applications to the Fund.
- Much of the discussions in our consultation meetings focussed on SGOs made to family and friends but for SGOs for former foster carers, there needs to be clearer guidance and strengthening of entitlement to leaving care provision for the young people on an SGO so they are not disadvantaged by moving from being looked after where they may be eligible under the Leaving Care Act 2000 for access to housing - financial support up to 25 and can access the Staying Put policy.
- Specific guidance is needed for managing the situation when a child under an SGO dies. The SG loses PR as soon as the child dies and this has led to very upsetting situations where parents have taken over funeral arrangements and prevented SGs from attending funerals.

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:

The key to good practice appeared to be where workers, or occasionally teams had been set up with specific responsibility for developing practice around Special Guardianship who would 'champion' special guardianship – in some cases this was situated in fostering or kinship teams who were responsible for assessment and support, in others SG support was held within the adoption/ adoption support teams. During our consultation with CoramBAAF members we were given examples of good practice, some of which are set out below.

Barking and Dagenham have a dedicated special guardianship worker who has developed an information sheet for both potential SGs but also birth parents and training and support for SGs
Hertfordshire provide training for their social work teams by their friends and family team. They provide QA oversight of assessments through a panel.

Reading have been operating a support group for family and friends carers since 2004 and have included both prospective SGs and SGs into this group. Training is provided within the context of a support group which seems to encourage attendance.

Gloucester offer 3 mini days of prep covering a range of topics and family mediation to resolve contact difficulties.

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

Comments:

- There needs to be further debate with local authorities and the judiciary about the use of supervision orders being made alongside an SGO. If the SGO is designed as an order to secure permanence it is hard to understand how the criteria for a Supervision Order, where there are remaining concerns about the ability of the carers or potential for safeguarding concerns, can be compatible with an SGO being made. This may reflect the need for a longer time being needed either to assess or to monitor the existing arrangement before a recommendation for an SGO can be safely made. Courts need to be flexible in allowing an extension of the 26 weeks where this is the case.
- Alternatively where the court is imposing a Supervision Order to ensure support for the SG and child we believe this should be dealt with through action from the local authorities to ensure they have appropriate support services in place with a clear and evidenced support plan to support the SGO.
- Courts need to be more flexible in applying the 26 week timeframe where it can be shown that more time is needed to enable placements to be tested prior to a SGO being made. Sometimes this timescale does not allow enough time to complete a complex assessment, e.g. where there may have been previous parenting issues for the prospective carers and the current situation needs to be 'tested out', to offer necessary preparation and training to previously unknown prospective carers and to

enable prospective SGs to process and come to terms with the child's circumstances which may have been previously unknown to them.

- In some cases children placed through an SGO may not have been looked after, and have thus missed out on the statutory comprehensive LAC health assessment, so their needs may be unknown. One of our Health Group members has noted that she had recently seen a child placed with an SGO, who had classic features of Foetal Alcohol Syndrome which had not been previously identified. This poses severe risk that health issues and resulting support needs may not be recognised and addressed. The guidance should make provision for comprehensive health assessments in this situation and should require that appropriate health services should be commissioned and provided by experienced health professionals with relevant competencies i.e. medical advisers for adoption and fostering.
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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.

Please acknowledge this reply.	/
Email address for acknowledgement: Elaine.dibben@corambaaf.org.uk	

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?

<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.

If you have any comments on how DfE consultations are conducted, please email:

consultation.unit@education.gsi.gov.uk

Completed responses should be sent by **18 September 2015**:

By post to:

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Department for Education
Floor 1
Sanctuary Buildings
20 Great Smith Street
London
SW1P 3BT

By email to: SpecialGuardianship.REVIEW@education.gsi.gov.uk

Thank you for taking time to respond to this consultation.