



Department
for Education

Special guardianship: a call for views

Government consultation

Launch date 16 July 2015

Respond by 18 September 2015

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Introduction

Special Guardianship was introduced as a new permanence option for children in December 2005. At the time it was considered that a new legal order was required to meet the needs of a significant group of children; these included mainly older children who had become separated from their birth family; children already settled with a relative or foster carer; and groups such as unaccompanied asylum seeking children, minority ethnic groups who have cultural difficulties with adoption and unaccompanied asylum-seeking children who may need a secure legal basis without breaking the strong attachment they may have with their family abroad.

Research¹ by Jim Wade on children made subject to an Special Guardianship Order (SGO) between 1 January 2006 and 31 March 2011, published by DfE in 2014, found that the introduction of SGOs had been well received by practitioners who saw it as an important pathway to permanence for some children, and that the risk of disruption of SGO placements was low. The research did find concern, however, that children living with special guardians, like adoptive children, can have ongoing issues due to previous abuse or neglect, and many families were struggling with unmet needs with little or no ongoing support.

Our engagement work with local authorities, indicates a gradual shift in the use of SGOs, for example with more being awarded to much younger children and concerns that the assessment process for special guardianship is in some cases not sufficiently robust.

We want to work with partners through the Review to understand the reasons behind the changes. We will use the Review to help inform any potential changes to the law and guidance.

The Review will be overseen by an Expert Advisory Group representing practitioners, local authorities, academics, representative organisations and a judicial observer.

Who this is for

- Local authorities
- Children and young people
- Special Guardians
- Social workers
- Birth families
- Judiciary and lawyers

¹ <https://www.gov.uk/government/publications/investigating-special-guardianship>

- Special interest groups

This Review was issued on 16 July 2015.

Enquiries

If your enquiry is related to the policy content of the consultation you can contact the team on:

- 0207 783 8149 and ask for Patrick Towgood; or
- 0207 783 8037 and ask for Neil Comport

or email: patrick.towgood@education.gsi.gov.uk

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

Additional copies

Additional copies are available electronically and can be downloaded from [GOV.UK DfE consultations](#).

The response

The results of the consultation and the Department's response will be [published on GOV.UK](#) in winter 2015.

About this consultation

This consultation document provides background to special guardianship and the surrounding legislative framework, and sets out a number of issues which have been raised with us. It concludes with a series of questions on which we would value your views and opinions.

Respond online

To help us analyse the responses please use the online system wherever possible. Email SpecialGuardianship.REVIEW@education.gsi.gov.uk to submit your response.

Other ways to respond

If for exceptional reasons, you are unable to use the online system, for example because you use specialist accessibility software that is not compatible with the system, you may download a word document version of the form and email it or post it.

By email

- SpecialGuardianship.REVIEW@education.gsi.gov.uk

By post

Patrick Towgood/Neil Comport
Department for Education
Level 1
Sanctuary Buildings, 20 Great Smith St,
London SW1P 3BT

Deadline

The consultation closes at 5pm on 18 September 2015.

Review of Special Guardianship

Background

Special Guardianship was introduced as an amendment to the Children Act 1989 by the Adoption and Children Act 2002 and became law on 30 December 2005. It was designed as a private law order made on application to the court by a prospective special guardian. The implementation of Special Guardianship was accompanied by [statutory guidance](#) (Department for Education and Skills, 2005), which states that the purpose of special guardianship is to:

- give the carer clear responsibility for all aspects of caring for the child and for taking the decisions to do with their upbringing. The child will no longer be looked after by a local authority
- provide a firm foundation on which to build a lifelong permanent relationship between the child and their carer
- be legally secure
- preserve the basic link between the child and their birth family
- be accompanied by access to a full range of support services including, where appropriate, financial support

The introduction to the statutory guidance states, as the rationale for introducing SGOs: *'Some minority ethnic communities have religious and cultural difficulties with adoption as it is set out in law. Unaccompanied asylum-seeking children may also need secure, permanent homes, but have strong attachments to their families abroad. The White Paper reaffirmed that these children deserve the same chance to enjoy the benefits of a legally secure, stable relationship and that legislating to create special guardianship would modernise the law to reflect this religious and cultural diversity.'*

Impact of family justice reforms on special guardianship

In April 2014, reforms to the family law system came into force with the Children and Families Act. These included a requirement for all standard care cases to be completed within 26 weeks through the Public Law Outline (PLO). Local authorities have changed their management of care cases, to comply with the PLO once cases are in court, which has led to earlier local authority family finding and improvements in early work with families. Concerns have been raised, however, that meeting the 26 week timescale has led to less time to undertake assessments of prospective special guardians if they come forward or are identified late.

This review will contribute to a developing picture of the impact of the reforms on the Family Justice system, and to identify both good practice models which we can share to support continuing improvement, and changes in practice which might need to be addressed to ensure that children receive the best outcomes.

The evidence

Use of special guardianship: data and research

Data published by the Department in [Statistical First Release: Children Looked After in England \(including adoption and care leavers\) year ending 31 March 2014](#) shows an increase in the proportion of children leaving care through a SGO, from 5% in the year ending 31 March 2010 to 11% in the year ending 31 March 2014.

The data shows that special guardianship is also being used more often for younger children; there was a 64% increase from 2013 to 2014 in its use for children aged under one. There is a wide variation in the use of SGOs with East Midlands, North East, South West and the West Midlands seeing the biggest increase in the use of SGOs between 2013-2014, while the East of England saw the smallest increase.

	2007	2008	2009	2010	2011	2012	2013	2014	2013 to 2014 % change
Under 1	60	120	110	90	130	160	320	520	64%
1 to 4	340	460	510	570	840	1,020	1,260	1,410	12%
All SGOs	750	1,130	1,240	1,280	1,780	2,150	2,770	3,330	20%

Number of SGOs age under 1-4 during year ending 31 March 2014

	2007	2008	2009	2010	2011	2012	2013	2014	2013 to 2014 % change
North East	50	70	80	70	120	120	170	220	31%
East Midlands	30	60	60	70	100	130	200	280	39%
West Midlands	80	90	100	110	180	200	280	360	27%
East Of England	50	100	110	110	180	230	260	280	5%
ENGLAND	750	1,130	1,240	1,280	1,780	2,150	2,770	3,330	20%

SGOs by selected regions

Concerns – engagement with local authorities

We have been told that improved pre-proceedings work has helped local authorities to identify potential special guardians earlier, and children are leaving care more quickly now through special guardianship. Care case duration figures have fallen from 55 weeks in 2012 to around 29 weeks in 2015 as a result of the reforms to the Family Justice System. However, there are some concerns, that to be compliant with the PLO requirement of 26 weeks for standard care cases, some assessments of special guardians are being undertaken to short timescales, resulting in some SGOs being awarded on incomplete or partial information. This is not in the best interests of children. It is important that in determining an individual's suitability for special guardianship that there is a robust assessment process which supports the best outcomes for the child.

Local authorities are also concerned that the threshold is lower for placing children with relatives - and others who may become a special guardian but who have no existing link with the child - than for other forms of permanence. There are different options that might be considered to address these concerns, for example putting the assessment of special guardians on a par with the assessment of foster carers and adopters. This is one of the areas on which we are seeking views.

Another message from our engagement work with local authorities is that special guardianship is not consistently perceived as a permanence option for children - with special guardianship sometimes being regarded as a temporary measure until a child can be returned to his or her parents. If this is happening, it is necessary to give more thought to the nature of the order, particularly as there has been an increase in the number of SGOs awarded with a supervision order. It is important to understand how and why SGOs are being used, and boundaries between local authority and the special guardian responsibilities, where an SGO has been awarded.

There are also views that some special guardians might need more support to become a special guardian or to sustain the special guardianship relationship; this is consistent with the findings in the Wade research, so we want to look at how needs are identified and how they are being met.

Views and issues

The law is clear that an SGO should be made where it is in the best interests of the child, taking into account the welfare checklists in The Children Act 1989 and Adoption and Children Act 2002. SGOs can be (and are) made in respect of children in very different circumstances. For example, SGOs are often made for children who are involved in 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 who are not likely to enter care, or who have been 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 simply 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 of any age 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.

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 (ie a similar situation to birth parents), or they may be assessing someone who does not know the child very well or at all (ie a similar situation to foster carers or adopters). LAs are not required to follow a consistent or minimum assessment framework for birth parents, potential special guardians, and prospective foster carers or adopters. We are interested to hear your views on how well assessment for special guardians works at the moment, and whether this could be improved.

For a special guardianship to be successful, both the child or children and the guardian(s) may need support. Where an SGO order 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 childhoods, 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 an SGO.

The rate at which SGO is used is highly variable between local areas; in addition, the research suggests that practice and children and carers' experience of SGO 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.

We welcome 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.

How well assessment for special guardians works at the moment, and whether this could be improved.

What advice and support is most important at each stage of an SGO.

Your views on what the best practice in special guardianship looks like so that we can support all practitioners to deliver this.



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