

18 September 2015

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

ADCS Response to the DfE consultation *Special Guardianship: a call for views*

1. The Association of Directors of Children's Services Ltd (ADCS) welcomes the opportunity to provide evidence to support the Department of Education's (DfE) review of Special Guardianship Orders (SGO). ADCS is the professional association for directors of children's services (DCS) and their senior management teams. Under the provisions of the Children Act 2004, the DCS is the chief officer responsible for the discharge of local authority functions with regard to education and children's social care and champion for children across wider children's services.
2. ADCS supports the use of SGOs where this route to permanence is deemed right for individual children and their families.
3. The White Paper '*Adoption: a new approach*' (Department of Health, 2000) supported the view that adoption is not appropriate for all children, particularly older children, those cared for by members of the wider family, some minority ethnic communities and unaccompanied asylum seeking children. It proposed a new option of special guardianship to provide permanence without the legal separation involved in adoption. Although the White Paper and subsequent '*Special Guardianship Guidance*' (DfE, 2005) both reference potential groups for whom special guardianships could apply, the regulations establishing SGOs are flexible about how and for whom SGOs can be used.
4. Due to the flexibility created within the regulations, local authorities are not restricted in using SGOs with particular groups of children and young people. As such, local authorities will carefully consider the range of care options available to them to ensure the most appropriate route to permanence is secured on a case by case basis for children in or on the edge of care.
5. DfE's call for evidence states that the number of SGOs granted has increased over recent years. ADCS members would put forward a number of reasons for this.
6. Interpretation of recent case law by the judiciary has led to the perception that adoption should only be used when all other options have been ruled out and 'nothing else will do'. As a result, a sequential approach to care has developed whereby rehabilitation work with families to maintain the child with family members is the most favorable option, followed by special guardianships and then adoption as a last and final resort. This approach has undoubtedly led to SGOs being preferred by the judiciary where previously, such children would have been subject to an adoption order. ADCS believes that any hierarchy of care is unhelpful. The focus of all care proceedings should be on securing the most appropriate permanence option for the individual child.
7. ADCS members report antipathy of some judges towards adoption. In some instances, this antipathy results in requests to assess family members as possible special guardians where there is no preexisting relationships with a child. While this is not necessarily wrong in principle, such circumstances require longer to assess the parenting capacity of the distant relative and the compatibility of this with the child's present and future needs.
8. In their research, '*Investigating Special Guardianship: experiences, challenges and outcomes*' (DfE, 2014) Wade *et al.* showed that although the breakdown rate for special guardianships was low, the breakdown figure was higher for those where special guardians were not kin and where the special guardian was not the child's previous carer.

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9. An increasing number of SGOs are being issued with supervision orders, imposed by the courts as opposed to being requested by local authorities. This would suggest that the threshold for SGOs has fallen to below that for other permanence orders and supervision orders are being used by the judiciary as a way of managing unassessed risk. This may be a result of pressure on social workers to deliver special guardianship assessments in very short timescales and the potential for this to result in a sub-optimal assessment thereby requiring the security of an additional order.
10. Any permanence order issued should significantly improve a child's outcomes, not marginally. A supervision order denotes a threshold of significant harm. If special guardian assessments are thorough and lead to SGO arrangements that are appropriate and devoid of significant risk, ADCS believes this additional order should not be required.
11. The use of restorative practice and family group conferences are increasingly being used with complex and sometimes chaotic families whose children are on the edge of care. This is a valuable approach which allows local authorities to raise parenting concerns at an early stage and explore the potential for special guardianship arrangements for children ensuring early identification and assessment of potential special guardians.
12. Children and young people subject to SGOs have similar needs to those who are adopted or placed in long-term foster care. Given the similarity of need, it is essential that there is parity in the assessment processes prior to orders being granted. Due to the timescales introduced by the Children and Family Act 2014 and the desire of local judges to conclude care proceedings within the stated 26 weeks, social workers can be placed under undue pressure to complete special guardianship assessments in unreasonable timescales. Timescales can be particularly challenging where a potential guardian has been identified at a late stage in proceedings or where there is no established relationship with the child. This can be further compounded when the potential guardian lives a significant distance from the child.
13. ADCS supports the need for care proceedings to be completed in a timely manner, however social workers must be given the time and space to conduct comprehensive and robust assessments to ensure there is compatibility between the needs of the child and the parenting capacity of the proposed special guardian. The assessment of special guardians must be rigorous. This assessment process requires a sensible amount of time to complete otherwise the standards in special guardianship will be compromised.
14. Although children subject to special guardianship orders will have similar needs to those who are adopted or placed in long term foster care, there are discrepancies in the level and types of support available to them and their carers. ADCS members believe that there should be no distinction between the support available for those children who have been adopted and those children in care or on the edge of care who are subject to a SGO. This includes access to the Adoption Support Fund to ensure children and their carers have access to appropriate therapeutic support. Post order support (both adoption and special guardianship) must be pro-actively provided to ensure children and carers are adequately supported and do not feel stigmatised by the need to ask for help. The preparedness of special guardians to accept support and work with professionals should be included in the assessment of their suitability as long term guardians.
15. For clarity, SGOs applied for privately (i.e. in private law cases) should not attract the same level of support (finance or otherwise) as SGOs granted in public law proceedings.
16. Much has been said about the relative costs of special guardianships and adoption. It has been implied that special guardianship is a cheaper option and this has been the driving force behind the increase in numbers. Unlike adopters, special guardians are eligible for financial support to meet the needs of the child up to the age of 18. The associations view is that the costs associated with special guardianships are likely to be approximately the same, if not more expensive than adoption.

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17. ADCS welcomes the flexibility regulations provide to local authorities in the provision of financial allowances paid to special guardians up until a child's 18th birthday. ADCS believes that there is a fundamental difference between foster care and kinship care and therefore does not support the view that kinship carers should be financially rewarded for providing care to family members.
18. ADCS does not think changes to primary legislation are necessary, however further clarity around the financial regulations for special guardians would be welcomed.

For further information, please contact Esther Kavanagh Dixon, ADCS Policy Officer, esther@adcs.org.uk / 0161 826 9487

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