



**Department for Education**

**Special Guardianship: A Call for Views**

**Submission by Coram and Coram Children's Legal Centre**

**September 2015**

Coram is the UK children's charity that has been supporting vulnerable children for more than 275 years and is still finding new ways to help children. We now help over a million children and young people every year. Coram helps children and young people develop their skills and emotional health, finds adoptive parents and upholds children's rights, creating a change that lasts a lifetime. Coram runs one of the UK's most successful and largest voluntary adoption services with one of the highest success rates in the country. Ofsted's latest social care inspection (June 2015) judged Coram's London-based adoption services as 'outstanding' in every category. The charity has specialised in adoption for over 40 years and is renowned for its support services for families which are available for as long as they are needed.

Coram Children's Legal Centre (CCLC), part of the Coram group of charities, is an independent charity working in the United Kingdom and around the world to protect and promote the rights of children, through the provision of direct legal services; the publication of free legal information online and in guides; research and policy work; law reform; training; and international consultancy on child rights. Founded in 1981, CCLC has over 30 years' experience in providing legal advice and representation to children, their parents and carers and professionals throughout the UK. CCLC's Legal Practice Unit specialises in child and family law, education law, community care law and immigration and asylum law. CCLC operates the Child Law Advice Service (CLAS), providing free advice on family and education law, and the Migrant Children's Project (MCP) advice line. The Migrant Children's Project at CCLC is a centre of specialist expertise on the rights of children subject to immigration control. As part of CCLC's work to promote the implementation of children's rights, CCLC has undertaken amicus curiae interventions in a number of significant cases, including in the European Court of Human Rights, the Supreme Court and the Court of Appeal, providing assistance to the court on matters of children's rights and best interests.

## **Introduction**

Coram and Coram Children's Legal Centre (CCLC) welcomes the opportunity to submit its views on special guardianship. These views have been formed following consultation with Coram Children's Legal Centre's Family Law Team and data and information from its Child Law Advice Service (CLAS). The CLAS has received an increasing number of calls in the past year relating to special guardianship. To give a brief illustration, in the most recent quarter (April to June 2015) it received and gave advice on 86 calls relating to special guardianship, constituting 32% of total calls related to child protection / children in alternative care received in the same quarter. These calls related to children across all age groups: 11 were under one; 27 were aged 1 – 4 years; 37 were aged 5 – 10 years; and 32 were aged between 11 and 17 years. Calls were received from all areas in England, and the majority of calls were from relatives of the child concerned: grandparents (34) and aunts / uncles (26) in particular. 14 calls (16%) related to the situation of a child living with a relative as part of a private arrangement that needed to be formalised; 36 calls (42%) included child protection concerns; 21 calls (24%) related to children who were looked after; and 18 calls (21%) were financial questions relating to special guardianship.

Contrary to one of stated rationales behind the introduction of special guardianship, it is not our experience that special guardianship is widely used for unaccompanied children seeking asylum. We

would welcome research from the Department about why this may be so and what options are being used instead – we have long argued the importance of permanency for this group of children.

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

In our view, regardless of the circumstances in which special guardianship is being considered, including the age of the child, the primary consideration guiding this decision must remain the welfare of the child, in accordance with section 1 of the Children Act 1989. Special guardianship can be a suitable permanence option for children in a diverse range of circumstances, and should not be necessarily viewed as unsuitable based on factors such as the child's age, without a thorough assessment of the circumstances of each case.

In some circumstances an adoption order will be the best interests order to make for a child who is to be cared for by a relative as it will provide ultimate assurance and confidence to the carers. However, the circumstances where adoption would be suitable for a child who is biologically related to the prospective carer will remain unusual given that adoption distorts already established legal relationships. Therefore, we do not agree that the trend of SGOs being made increasingly in the case of very young children is necessarily a negative development. Special guardianship may be suitable where it is in the best interests of the child concerned not to completely sever legal ties with their birth parent/s. We do appreciate that SGOs are increasingly being made in relation to younger children. However, we are unsure whether there is a direct correlation between that fact and the decrease in adoption orders. If the Family Court is making fewer placement orders, it seems to us the reason for this is that adoption is judged not to be the best placement plan for the child in those cases. That may well be because a family and friends carer has been assessed as being the best person to care for the child. The fact that an SGO may be made to that carer (even if a young child) should not be a concern if that is the right order to make in the child's interests. Prior to the advent of SGOs, residence orders would have been made for friends and family carers. Therefore, we expect that whilst there is said to be an increase in the number of SGOs being made, there will also have been a corresponding decrease in the making of residence order (or post April 2014) child arrangements order which settle a child's living arrangements.

In our view, it would not be good practice for different legal principles and frameworks to apply in different circumstances: the application of special guardianship should be considered, in all cases, in accordance with the welfare paramountcy principle, in accordance with what is in the best interests of child and with the regulations and statutory guidance relating to special guardianship.

It is clear from the calls received through our CLAS that implementation of the legal framework is inconsistent across local authority areas, with some not adequately applying the regulations and statutory guidance. We have noted, in particular, that many carers and (potential) special guardians are unclear about what special guardianship is or involves, that it is a permanence option, and that they and the subject child are entitled to particular forms of support under an SGO. Also, there is often widespread confusion about financial support – who is entitled to it; what the appropriate allowances should be; and what should happen if the special guardian moves to a new local

authority area after a SGO is made. This is discussed further below (question 4). However, **we would recommend that the guidance on special guardianship (2005) be updated to include:**

- **An elaborated list of support and services available to (prospective) special guardians, that is consistent across local authorities – a menu of support services which each local authority should make available may assist special guardians to know what they should be requesting. Often such carers may not ask for support because they do not know what could possibly be made available to them or the child;**
  - **Detailed provision on financial support – there is often confusion about this and special guardians who do not have legal support may struggle to understand what financial support can be offered. We suggest that the guidance be updated given developments in case law since the introduction of special guardianship.**
  - **A requirement for local authorities to provide accessible information to (potential) special guardians on the support and services to which they may be entitled**
- 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?**

We are aware that there is inconsistency in the approach that local authorities take when conducting assessments of suitability to care as a prospective special guardian. Although the Regulations set out the factors that the assessment need to cover, the process is not always as robust as assessments of suitability to foster or adopt which follow a more thorough and comprehensive process. Although the assessment processes for fostering and adoption and special guardianship will naturally differ, we are concerned that assessments for special guardianship are usually conducted within the currency of care proceedings which are themselves subject to a stringent 26 week time limit. We are aware that assessments are often rushed as a result especially when family members only put themselves forward to care for a child at a later stage within the proceedings.

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

In our view, assessment processes need improvement. It appears that unreasonable pressures are being placed on local authorities to complete assessment reports as well as fully document support packages within the statutory time limit for care proceedings, with judges very reluctant to grant extensions of time for the assessment work to be carried out properly. Judges have their own pressures as each local family justice area is being monitored as to its performance in completing cases within the time limit. These statistics are published and so add pressure on judges. In our view, this leads to a judge then putting pressure on a local authority to file the assessment report in a short timeframe without necessarily considering that thorough assessments should be done over time. It is not always right to do the same work in a contracted period of time. In fostering and adoption suitability assessments, there is often a great benefit to the assessment if it is taken at a certain pace as this allows not only the person being assessed but also the assessing social worker

time to reflect, pause and consider. We suggest that these aspects are also important for special guardianship assessments.

These issues are causing assessment work to suffer: support is not always detailed properly, and there is often no time for special guardians and others to comment on proposed support packages before final orders are made. Special guardians are often not able or do not have time to access quality legal advice to assist them throughout the assessment process. This is problematic, as it means that special guardians may not have a full understanding of what special guardianship involves and may not have the right support in place to allow the subject child to thrive in their care before final orders are made.

We are concerned that where a local authority does provide funding to the prospective special guardian to obtain independent legal advice, the funding invariably covers only 1-3 hours worth of time, which is simply not sufficient to provide the legal services necessary. This will only cover initial advice and assistance. It will not be sufficient to allow a legal adviser to consider any support plan, to advise on the same and to enter into negotiations with the local authority about support or to make representations on behalf of the prospective special guardian.

The Justice Committee has recommended that *"further consideration be given to the provision of legal aid in private law applications for Special Guardianship Orders where applicants are members of the extended family."*<sup>1</sup> In its Response, the Government pointed out that legal aid is available where Special Guardianship is sought in relation to and as an alternative to care proceedings, and this does work for some prospective special guardians. However, this does not help those prospective special guardians who are above the means threshold so not financially eligible for legal aid yet cannot afford to pay private fees for representation and advice. **It is essential that all prospective special guardians are able to access comprehensive legal advice promptly. Further it is imperative that local authorities understand the need for full advice and representation and avoid funding only tokenistic initial advice.**

Where a child cannot return home, one of three outcomes usually follows, namely adoption, special guardianship or long-term foster care and any proposed carers are assessed accordingly. Foster carers and adopters are assessed against a detailed list of competencies and their cases are placed before a panel before approval can be given. In contrast, the process of assessing prospective special guardians is not prescribed at all. It has been suggested that special guardianship assessments should be carried out in the same way as adoption/fostering assessments – **certainly, we believe that the overall depth of the assessment and the timescales to be followed for SGOs should be comparable to those for foster care/adoption, even if the process is not exactly the same.** This is particularly important as potential special guardians (from the family network) may be caught up in the family dysfunction that caused the child to be brought to the attention of the local authority in the first place. They may put themselves forward to care for the child as a response to a crisis within the family. These aspects need careful social work consideration as part of the assessment process which may take additional assessment time and social work reflection.

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<sup>1</sup> Eighth Report of Session 2014-5 (Impact of changes to legal aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012), para 62

It is important to avoid serial assessments either as part of the court process or outside of it, as this is a source of unnecessary delay. Learning from Coram's Concurrent Planning scheme has shown that concurrency promotes more timely permanence. Coram's Concurrent Planning research<sup>2</sup> (March 2014) found that Concurrent Planning was effective in ensuring early security and ongoing parental commitment to very vulnerable children.

Better SGO assessment guidance for local authorities to follow would ensure that assessments are carried out consistently and to allow for the use of efficient rule in rule out criteria at an early stage. An example of improved assessment guidance would cover how to address and weight the issues identified in the Research in Practice/DfE research report<sup>3</sup> as supporting successful placement i.e.:

- there has been a long-term relationship/bond between the child and the carer
- the carer understands the child's needs and there is a good match between the child and the carer
- the carer is committed to caring for the child throughout their minority and they understand that they are not just looking after the child until the parents get better
- the carer is aware that their primary responsibility is the safeguarding and welfare of the child
- the carer is able to manage complex contact arrangements (with support if necessary)
- the carer has a good support network.

**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**

It should be noted at the outset that the response to this question is not exhaustive: it includes those types of advice and support that we have found to be of concern to callers and clients, particularly focusing on advice and support that local authorities are failing to deliver / put in place.

- **Accessible information and guidance on the nature of SG and support available**

There appears to be a lack of accessible information available to potential Special Guardians on what SG is and what it involves. Existing information is, in our experience, either too simplistic or overly complex, making it difficult for SGs to understand fully what the nature of SG is, and therefore, whether it is a suitable option for them and if so, what forms of support they need to request from the local authority to ensure that the placement is successful. 30% of the 86 callers in Q1 of 2015/16, for example, were not aware of SG as a preferable option in their situation.

Also, it appears that SGs do not always understand that SG is a permanence option that is not intended to be a holding position until the birth parent/s has improved (though SGs do need to know that parents can apply to discharge or vary a SGO).

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<sup>2</sup> [www.coram.org.uk/resource/outcomes-coram-concurrent-planning-summary-findings](http://www.coram.org.uk/resource/outcomes-coram-concurrent-planning-summary-findings)

<sup>3</sup> [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/450252/RR478B - Family justice review special guardianship orders.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/450252/RR478B_-_Family_justice_review_special_guardianship_orders.pdf)

In addition, it appears that SGs are not always properly advised as to the different types of support that is available. Many callers to the CLAS do not appear to be aware of their entitlement to different types of support, in particular, financial support, from local authorities; some being made to feel that it is their moral obligation to care for the child, if they already have a relationship with them, and they should not feel entitled to financial or other support.

**Case study:** CCLC was contacted by a Mrs X whose grandchild was under an interim care order and the court has approved temporary placement with the grandparents. Children's services previously assessed the grandparents not to be suitable as foster carers but had not informed the grandparents that they were eligible to receive financial support for caring for the children. Children's services had allegedly told the grandparents that "you wanted the child therefore you will have to pay for them."

- **Independent legal advice / representation**

There appears to be a lack of legal advice and support offered to individuals throughout the assessment process and in applying for a SGO. A significant number of calls to the CLAS were made by relatives with a child in their care who had been advised by the local authority to apply for an SGO, but not given any support to do so. As an SGO is a private law order, persons applying for one do not fall within the scope of legal aid unless they are applying for an SGO as an alternative to the need for care proceedings, and so, may not be in a position to access legal advice and representation to apply for an SGO. Even if the person is 'in scope' of legal aid, it is means tested and so the person may find themselves not eligible. Local authorities may and often do provide funding for legal support, but this is not always the case. Where funding is provided, it is often a fixed amount, which does not fully cover the type of advice and representation required.

**Case study:** Ms M had both her grandchildren aged 4 and 6 placed in her care last year by children's services. The children had been on a child protection plan until 6 months previously. They had been taken off of the child protection plan because children's services were satisfied with the care being provided by Mrs M, but children's services had not then provided any further guidance or support. Mrs M contacted the Child Law Advice Service to seek advice on permanent options for the children. She was not previously aware of the option of applying for a Special Guardianship Order.

- **Supporting SGs in managing contact with birth parent/s**

A significant number of calls related to the management of contact with birth parents (15 out of 86 calls), with local authorities appearing not to provide guidance and support, and special guardians unclear about what their legal obligations are in relation to contact. Contact can be a contentious issue between parents and carers and special guardians must be able to rely on the local authority for support in this area. This is particularly difficult where Special Guardians have some form of relationship with the birth parent/s, and where there are particular child protection concerns.

**Case study:** Mrs F is the grandmother of two children aged five and one. The children are living with the grandmother after being placed with him by children's services. The caller was told by children's services that the children, who are on the child protection register, should not be placed back with the parents and only supervised contact is allowed. The father of the children has threatened that technically he can pick the children up and take them back. The caller did not know what the legal position is and what her options were.

Special guardians should be well prepared and supported to manage contact and this support can vary across local authorities. Special guardians need similar training to the stage two preparation groups for adopters which can be adapted for special guardians and to have more of a focus on managing contact.

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

There is little information on the 'type' of children that are going forward for SGOs. More thorough and standardised information on where these children are being placed, how old are they, their gender and their ethnicity is necessary. Without this information it is harder to understand the nature of these children's needs and how we can support the best outcomes for them.

It would also be beneficial to have feedback for the Local Family Justice Council and courts about how well children do and which placements disrupt. There needs to be more research and understanding about what makes a successful SGO placement.

The use of Supervision Orders alongside SGOs should be considered where this is necessary to ensure the local authorities' continued involvement and should be made where it is in the best interests of the child.

***Please direct inquiries to:***

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