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Response to	<b>Special Guardianship Orders</b>
Issued by	<b>The Department for Education</b>
Link to consultation	<a href="https://www.gov.uk/government/consultations/special-guardianship-review">https://www.gov.uk/government/consultations/special-guardianship-review</a>

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**1. 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.**

The MA would highlight the importance of ensuring that Special Guardianship Orders (SGOs) are used appropriately and for the right reasons.

In general terms, magistrates in the family court would always want to be confident that, when SGOs come before them:

- They are the most appropriate option for the child and are being used as an alternative to care for the right rationale
- There should be a persuasive rationale for choosing SGOs rather than Child Arrangements Orders (CAOs) with residence requirements, to the same people, followed later by an application for a SGO – the latter approach may allow the placement and bond between guardians and child(ren) to be tested over time
- Parents are agreeing to an SGO for the appropriate reasons, not just because they believe it will allow them to have contact with the child or that the child may be placed with other family members.

Clear guidance from the senior family court judiciary on the appropriate criteria for the use of SGOs would be beneficial. Recent DfE research also highlights the need for improved guidance on SGOs<sup>i</sup>.

When magistrates have made orders in the family court, including SGOs, they do not usually receive feedback as to how the SGO is going. It would be helpful for magistrates to receive feedback on SGOs and their progress, not least to build their confidence in their decision making for future cases. Lessons learnt from real cases could be given in a training or appraisal environment.

Magistrates should be confident regardless of whether the child originally came before magistrates in the family court under public law and a care order, or if prospective Special Guardians (SGs) are encouraged by the local authority to apply to the court of their own volition in private law proceedings that the appropriate level of support would be offered to SGs. Magistrates are not confident that the full level of support is always offered to SGs when the SGOs arise through private law proceedings.

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

From magistrates' experience of assessment for SGOs in the family court, the MA would like the following issues to be taken into consideration:

- Could one assessment be used for fostering, SGOs and adoption? This could allow people caring for children to move seamlessly from one category to another.
- If different assessments continue to be used, the SGO assessment presented to magistrates in the family court should be as rigorous as those for foster care or adoption.
- SGOs may, on average, take longer than a care order, due in part for the length of time needed for a full assessment. It should be expected that courts will give more allowance for the 26-week limit to be extended where an SGO is the intended outcome of care proceedings. This issue was also raised in recent DfE research<sup>ii</sup>
- Assessments need to give enough information about the resilience of family members, the internal dynamics of the child's SG placement family and the dynamics of the SG placement with the child's birth family for magistrates to make the right decisions. The issue of the importance of considering family dynamics was also raised in recent DfE research<sup>iii</sup>

## **3. What advice and support is most important at each stage of a SGO?**

No comment

## **4. What the best practice in special guardianship looks like so that we can support all practitioners to deliver this.**

The MA would encourage further research on the outcomes of SGOs and what makes a good SGO placement.

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<sup>i</sup> DfE, August 2015, Impact of the Family Justice Reforms on Front-line Practice Phase Two: Special Guardianship Orders Research report  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/450252/RR478B\\_-\\_Family\\_justice\\_review\\_special\\_guardianship\\_orders.pdf.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/450252/RR478B_-_Family_justice_review_special_guardianship_orders.pdf.pdf)

<sup>ii</sup> Ibid

<sup>iii</sup> Ibid