Nagalro Response to the Government Consultation on Special Guardianship

16 September 2015

About Nagalro

1. **Nagalro is the professional association for Family Court Advisers, Children's Guardians and Independent Social Workers.** It has approximately 700 full members in England and Wales who represent the interests of children in a range of public and private law proceedings. Our members are senior, highly experienced children and family social workers who work in a variety of roles. Many work as independent social workers and risk assessors providing expert witness reports in a wide range of complex cases coming before the family courts; in fostering and adoption agencies; in independent practice providing therapeutic services; as academics; as supervisors, mentors and consultants. Members have significant experience as managers, chairs of Adoption Panels and other specialist social work practitioner roles.

2. Members also act as Children's Guardians and Family Court Advisers for the Children and Family Courts Advisory and Support Service (Cafcass) where they work in tandem with children panel solicitors to represent the interests of children in care and other family proceedings.

3. Our members are primarily concerned to promote the paramount welfare of vulnerable children who are involved in family court cases. They have an important role in enabling the child's voice to be heard in court proceedings, so enabling compliance with Article 12 of the United Nations Convention on the Rights of the Child. They assist family courts to reach decisions about what plans will safeguard the child's interests and best provide for their future welfare.

Are any changes needed in the legal framework?

- The Legal framework generally works well.
- Special Guardianship (SG) is a private law order and in the event of the death of the Guardian or breakdown of the placement in the child's minority the Parental Rights (PR) reverts back to the birthparents with Parental Rights regardless of any risk identified previously. There is a legal mechanism for a Special Guardian to identify and name a specific 'Testamentary guardian', someone to take over their PR for a child in the event of their death. This course of action is not widely understood or explained at the time of assessment. A case is known where great distress was caused within a family after the tragic death of a young MGM with SG when the step-grandfather had to be assessed for SG in his own right in order to be able to continue to care for a 6year old with special needs.

- Testamentary guardianship is limited to the extent that the 'guardians' only gain PR, similar to that of a parent and not the overriding PR of the original Special Guardian. If there is a dispute this can be settled only by further legal proceedings.
- Where children are placed without a prior relationship (usually as the outcome of care proceedings) there is a risk of breakdown in the placement and SGs seeking to revoke the order and/ or return the children to care, a situation complicated if they live at a distance from the original LA. A case is known where break down occurred after a year and there was dispute between the 2 authorities involved. The parents fortunately declined to assert their PR claim to the 3 children, but fresh care proceedings were eventually instigated by the original authority causing delay in finalising plans for the children. In this case no 'testing period' was allowed despite it being strongly advocated by both the Guardian and Social Worker due to timetable pressures from the court (even prior to the 26 week limit) and resource pressures from the LA Service manager.
- LAs generally are identifying prospective SGs earlier at the pre- proceedings stage, but delay is being caused in some cases by parents refusing to agree to grandparents and other potential carers being informed for various reasons and Social workers for reasons of confidentiality are reluctant to share information against the wishes of parents and often potential carers only come forward quite late in the day once directions regarding disclosure are made within proceedings and the limitations of the 26 weeks are then operating.
- Viability assessments, in the experience of Nagalro members, are currently of exceedingly variable quality and rigor and can be inappropriately influenced by the preconceptions of the assessor and the time constraints of the children's social worker, who often is left to this task.

Proposal:-

1. At the time of SG Assessment as part of the report format prospective 'Testamentary Guardians' in the event of death or indisposition are named, their suitability and willingness to act assessed enabling the parents also to comment in order to enable the smooth transition of arrangements in the event of tragic circumstances. They should 'inherit' all the powers of the deceased Special Guardian. These people are usually close family members and in practice uncontroversial.
2. In the event of a breakdown of an SG placement, certainly within a year and Special Guardians indicating that they want the order revoked the children's legal status should revert to that immediately prior to the making of the SG order, normally as subjects of care proceedings, which would thus, unambiguously indicate the responsibility as being that of the LA bringing the original proceedings in order to avoid children directly returning to parents, who by definition pose a significant risk.
3. In cases of SG assessments of applicants with no prior relationship the standard of assessment should be much higher than is often found at present and as rigorous as for any other unrelated carer such as adopters

or foster carers and the court time table should make proper allowance not only for a full assessment, but a period of introductions of the children to the prospective carers and including assessment of the children's response to placement. (The BAAF Connected Person Format, based on that of the fostering and adoption Form F format, which is time consuming to complete and requires detailed information may be the best vehicle for such an assessment). This will cause some delay and probably stretch beyond 26 weeks, but this step almost certainly will avoid the breakdown in some SG placements, which seem to be happening with greater frequency, although no figures are given in the Consultation document.

4. Once in pre-proceedings there is a presumption regardless of the parents' wishes that all suitable people are identified, a Family Group Conference held and parents failing to cooperate will be seen as failing to act in the interests of their children. It is accepted that this has legal complications, but if implemented effectively would further reduce delay and enable more time at the pre-proceedings stage for full and adequate SG assessment, which is the ideal practice on which the 26 week limit is predicated. Proper provision of appropriate legal advice and guidance (as proposed by the FRG) for parents would also undoubtedly improve cooperation at this earlier stage.
5. There should also be a presumption within the statutory framework that all prospective Special Guardians should be able to see their reports, viability and SG, be offered a specific appointment with the Children's Guardian and a right to make representations to the court regarding their assessment, not all of which happens in every case at present.
6. Viability assessments are an essential part of the assessment process and should have a statutory status, format and associated guidance to improve time efficiency, independence and rigor.

Are any changes needed in the practice framework? How well does assessment of special guardians work at the moment and can this be improved?

- The Special Guardianship report format if used correctly and rigorously provides a clear, time efficient and straightforward way of conducting an assessment particularly in cases, where the child/ren are either actually living with the prospective SG , such as a foster carer, or relative or where there is a close relationship, regular face to face and some staying contact. It is argued that assessments in these cases should give significant weight to a child's pre-existing relationships, which the current format allows for.
- The test to be applied in such cases should be similar to that used with parents, with regard to harm or potential risk of harm. There should be no less rigor than with applicants with no previous relationship, but a different focus during the assessment is needed. The assessment should prioritise the assessment of harm, and particularly the SG's ability to manage complex family dynamics and their ability to maintain appropriate boundaries between the children and parents, which is the main challenge in these cases and should avoid value judgments (such as all babies

should be adopted!), and give appropriate weight to the child/ren existing relationship with the prospective Special Guardian. Prior to the case of Re BS prospective Special Guardians/kinship carers were at times written off for quite spurious reasons and not given an opportunity to make representations within the court proceedings.

- In the experience of Nagalro at times the quality of SG assessments is insufficiently rigorous. Referees are not always 'interviewed' as the format states, substituted by phone calls or letters. Full medicals including an overview by the Agency medical advisor are not always done, and the information provided can be very scanty .A DBS is only "advisory" and not a requirement. The existing report format does not sufficiently and specifically address 'family dynamics' and the likely impact on the child/ren both positive and negative.
- There is evidence that in the first instance Children's Guardians are not insisting, nor are courts, on sufficiently high standards and not requiring LAs to do better. The main reason is the 26 week time pressure, but also a possible lack of knowledge of what actually constitutes a good assessment may be a contributory factor.
- In many LAs the task of completing kinship assessments and SG reports falls either to the Adoption or Fostering team for whom in both cases it is not the priority either for the social workers or for the clerical support, which can result in delay in rigorously pursuing all the checks in a timely way and not necessarily the most committed or experienced staff doing the task, which competes with all their other work. Some LAs use experienced independent SWs, who may be more experienced and provide a better quality of work, but at a price. Some have a dedicated team of workers, whose role is solely to do both SG assessments and post order support, which allows some expertise to be developed. In some LAs assessment and support are divided between two teams.
- The Viability Assessment has occupied an increasing role in the practice process of a SG Assessment. At the March Nagalro conference chaired by The President of the Family Division a show of hands from the legal and SW practitioners present indicated that these reports were often of poor quality a view also expressed by some members of the BAAF Legal Advisory Group. These reports are often left to the child's SW and are of very variable quality.
- Children's SWs have been observed to approach the assessment of friends/family with preconceptions lacking reflection. Some perceive the relative, particularly grandmothers as 'the cause' of the parent's problem and are prejudiced. On the other hand others increasingly come from cultures where looking after kin is normal without payment or support and whilst positive can be critical of Special Guardians asking for financial support.
- Courts tend to use the terms 'Special Guardianship', 'Kinship Assessment' and 'Connected person Assessment' interchangeably. Most prospective kinship carers with a pre-existing relationship do not want to be foster

carers and for this group the SG report format seems to work well. A more specific analysis of the type of report required reflected in court directions could help to ensure a more focused and timely report. For example, Hertfordshire CC SG team have already liaised with their local courts and have an agreed practice that vague terms such as 'kinship assessment' are avoided.

Proposals:-

1. LAs should be required to ensure that there are sufficient staff resources with adequate knowledge and skills and breadth of perspective to complete timely and rigorous assessments. The best model seems to be one of a manager with a dedicated group of workers, who appreciate the pressures of a court timetable (not always found in either fostering or adoption workers and their admin support!) with good administration support to enable checks to be returned speedily, whose first priority is providing both viability, SG and Connected Persons reports to the court, which should include post-order support, rather than the work being disseminated around different teams. This should ensure better quality assurance
2. Statutory and DBS checks, medicals and all assessments as far as possible are done at the pre-proceedings stage and are a legal requirement.
3. Viability assessments should be done by dedicated workers to the same statutory format with specific guidance and importantly contains always an analysis of strengths and vulnerabilities, and the impact on the child of placement or otherwise so that the assessment process is transparent and open to challenge.
4. The SG report format, whilst as it stands provides a good framework to assess prospective Special guardians with a pre-existing relationship if used properly never the less needs 'Guidance' and a more specific focus on 'family dynamics' and its impact on the child, the parents and other family members if the SG order is made.
5. Courts should distinguished between prospective friends/family carers, who have strong and pre-existing relationships and those ,who do not and order the most appropriate type of assessment and timetable realistically.
6. Guardians have an important role in, firstly, advising on the type of report needed, and secondly rigorously challenging poor quality assessments and reports and being prepared to ask for further work to be done.

What advice and support is required at each stage of an SGO?

- It is the experience of Nagalro that many prospective SGs lack advice at all stages of the process. They are often kept in the dark at the beginning of pre- proceedings by the parents and find Social Workers unforthcoming due to 'confidentiality' reasons. They find themselves required to comment on the LAs' concerns' when lacking basic information not having seen any documents or read any papers,

- They are generally unclear about the different means of achieving permanence and the orders that can achieve the best outcome for the child/ren.
- They often come only slowly to an understanding that the placement of the children is not proposed to be temporary but that SG is a permanent order and this is the basis of the assessment.
- They are unsure/anxious about what practical/financial/emotional support may be on offer and worried to ask, so as not to be seen as 'in it for the money'. Some may have to consider giving up/adjusting work to care for the children and are unsure about whether they can ask about support for child care.
- Many are anxious about being 'in competition' with their son/daughter as a carer for the child and are initially reluctant to voice their concerns for loyalty reasons. They crucially need time to build a relationship of trust with the worker.
- Some find that the Children's SW, with whom usually they have first contact, lacks sufficient understanding of the legal context to advise and sometimes even give misleading advice. Most do not have the means to pay for legal advice. Those, who have PR in care proceedings, usually through the making of a child arrangement order for residence, and have party status and legal advice fare best, but they are the minority.
- Post order some SG placements fail mainly due to unexpected pressure of caring for damaged children, lack of timely support and financial pressure.
- There is a significant difference between LAs in the level particularly of financial support on offer to both relative and foster carer Special Guardians. Some LAs will continue to pay foster carers the same amount less Child Benefit etc., where as in others FC suffer a significant loss of income taking SGO on their foster children. The Wade research shows this as an inhibiting factor for FCs seeking SGO and this continues to be the case.

Proposals:-

1. There should be a presumption at the Pre-proceedings stage that a FGC is held and all relatives in regular contact with the children are invited, informed of the LA's concerns and advised regarding the assessment process for SG, regardless of the parents' views. 'Confidentiality' and the parents' exercise of their rights issues will need to be overcome to achieve this practice consistently.
2. It would assist and save much time if each LA prepared a leaflet/web site for all relatives/friends in contact with children setting out the legal framework and assessment process, the support on offer, and the key issues of the LA's SG policy. This should include links to advocacy agencies, such as the Family Rights Group, Grandparents' Association and any relevant Government web-sites where further information can be found. Some LAs are, however, reluctant to refer prospective SGs to

advocacy groups for fear they will encourage financial demands! An example of good practice is found in LB Barking and Dagenham, who provide a leaflet of relevant information for SGs.

3. The worker doing the viability assessment should be knowledgeable and have a very good grasp of the legal context and provide accurate information within their competence including a list of local solicitors on the Children's panel, for prospective Special Guardians to be referred for more complex issues.
4. Ideally, any prospective Special Guardian, who has 'a realistic prospect of success' should be given the same level of funded legal advice as is already available to foster carers wishing to seek SG. There is, of course, a cost implication to this proposal. Some LAs, such as Essex, Southend and Thurrock already provide this after receiving a positive viability assessment.
5. Those having SG assessments must have sufficient time to build a relationship of trust with the worker. Most grandparents (who are the major group of SG applicants) are grappling with many strong, painful and conflicting feelings regarding the needs of their son/daughter versus the children, shock at the concerns of the LA, worries regarding their finances, caring for emotionally damaged children and managing contact. If this need is given insufficient weight there is a risk of breakdown and harm to the children through rushed and inadequate assessments.
6. A clear Support Plan, should be prepared at the end of each SG assessment setting out the needs and support on offer to the child/ren, Special Guardian, parents, and any other relevant person, which addresses all the child's physical, social, identity emotional, therapy and educational needs, the contact needs and support needed, practical and financial support to the Special Guardians. The model format used by Medway Council is one example of good practice known to Nagalro.
7. Post order Special Guardians may need for a period of time the same level of support as LA foster carers for LAC as research indicates they are dealing with a similar cohort of children with similar issues. Good practice would provide a similar level of such advice and guidance to Special Guardians, who should be given support by designated workers in facilitating speedy access to health and educational support as is available to LAC foster carers.
8. Parents benefit from support in managing contact in new circumstances. An example of good practice is found in LB Barking and Dagenham, who hold support groups three times a year for Special Guardians and notably also for parents, called 'Gatherings' to enable them to share issues and receive advice regarding their management of contact, which is felt to reduce placement breakdowns. Essex provide 'mediation' mainly to help resolve contact issues.
9. Many SG children now have the benefit of accessing 'Pupil Premium' money and the associated benefits, which has been a recent positive benefit and support, but not all if they have not been previously LAC.SG

children also have no access to the 'Adoption Support Fund'.SG children should have access to both forms of support through a 'Special Guardianship passport' as recommended by the Kinship Alliance Group in their response prepared by FRG.

10. Consideration should be given for some greater standardisation of rates payable under SGO, which at present is something of a 'postcode' lottery between different LAs. LAs after the Re BS judgment are also facing an increasing financial burden supporting people with SGOs caring for children, who in the past would have been placed in the ''cheaper'' option of adoption and there is an argument for such payments to be funded nationally perhaps as an additional child benefit to ensure fairness.

Conclusion

Overall, Nagalro is of the view that if children cannot live with their birth parents placement under Special Guardianship with relatives offers the best option if rigorously assessed as safe and the balance of risk and benefit is positive.

Since its inception almost ten years ago the Special Guardianship provision has been a most positive and beneficial addition to the 'menu' of orders available to the family courts to meet the needs of children and no substantial changes are needed in the legal framework or practice other than those proposed above. For the most part it is from the lack of resources for the adequate provision of professional (legal and social work) advice and support and assessment services that the difficulties have arisen and the variability between different areas and LA provision of services, which should be placed on a firmer statutory footing if the best practice is to be universal.

Nagalro
PO Box 264
Esher
Surrey
KT10 0WA

nagalro@globalnet.co.uk
01372 818504

This response emailed to SpecialGuardianship.REVIEW@education.gsi.gov.uk