Special Guardianship: A call for views

Prepared by

Family Rights Group on behalf of the Kinship Care Alliance

Endorsed by:
Buttle UK
Childhood Bereavement Network
The Grandparents' Association
Grandparents Plus
Kinship Carers UK
NAGALRO
Mentor
Siblings Together

September 2015

For further information contact:
Bridget Lindley or Cathy Ashley
Family Rights Group
The Print House
18 Ashwin Street
London E8 3DL

blindley@frg.org.uk
cashley@frg.org.uk

Contents

A. What is the Kinship Care Alliance?

The Kinship Care Alliance is an informal network of organisations working with family and friends carers (also known as kinship carers) which subscribe to a set of shared aims and beliefs about family and friends care. Since 2006, members have been meeting regularly to develop a joint policy agenda and agree strategies to promote shared aims which are:

a) to prevent children from being unnecessarily raised outside their family,
b) to enhance outcomes for children who cannot live with their parents and who are living with relatives and
c) to secure improved recognition and support for family and friends carers.

The Kinship Care Alliance is serviced by the charity Family Rights Group.

Family Rights Group, which drafted this response, is the charity in England and Wales that works with parents whose children are in need, at risk or are in the care system and with members of the wider family who are raising children who are unable to remain at home. Our expert advisers, who are child welfare lawyers, social workers, or advocates with equivalent experience, provide advice to over 6000 families a year via our free and confidential telephone and digital advice service. We advise parents and other family members about their rights and options when social workers or the courts make decisions about their children's welfare. We also campaign for families to have a voice, be treated fairly and get help early to prevent problems escalating. We lead the Kinship Care Alliance and champion Family Group Conferences and other policies and practices that keep children safe in their family network.

This response is informed by contributions from:

- Colleagues in the Kinship Care Alliance, including CoramBaaf, Professor Joan Hunt and Robert Tapsfield;
- Family Rights Group's advice staff who advise special guardians and parents about all aspects of special guardianship orders, and the alternatives;
    - Interim findings from special guardians who have responded to our recent kinship care survey (Aziz, 2015)[1]; and
    - Practitioners who have responded to our survey about viability assessments (results set out in Appendix A).

B. The context of our response

Special guardianship orders were first introduced 10 years ago. According to Jim Wade's 2014 study on Special Guardianship[2], there are an estimated 19000 children who have been subject to a special guardianship orders since it came into force. Of these around 85% (16150) were living with kinship carers. 82.5% of the children were looked after at same point and 73.5% were looked after immediately prior to the special guardianship order.

[1] Aziz (2015, unpublished) Messages from kinship carers, interim report (FRG)
[2] Wade J, Sinclair I and Stuttard L (2014) Investigating Special Guardianship (DfE & University of York)

Thus special guardianship has proven to be effective as a long awaited permanence option for children to live within their family network, when they couldn't live with their parents. It provides greater security than a residence order (now child arrangements order) without, as adoption does, severing the child's legal ties with their relatives, thus respecting their right to family life. The research findings on children in kinship care highlight the emotional wellbeing and positive sense of identity that they gain from such arrangements (Selwyn et al, 2013)[3].

There is research evidence which shows that the breakdown rate when special guardianship orders are made in favour of relatives is low (Selwyn et al, 2014[4]). This is despite the adversities that the children have previously faced and many children and special guardians receiving inadequate support. Research (Wade et al, 2014), our collective experience of working with children and special guardians (including providing advice) and responses to our recent kinship care survey confirms that the overriding issue for special guardians is that they cannot get adequate, sustained, support to raise the child who is the subject of the order.

We have set out below our response to the questions raised by the Department for Education consultation paper and our recommendations for change under topic headings.

C. Independent legal advice and representation

1. Need for specialist independent advice and advocacy for special guardians to make informed decisions

In order to make an informed decision about whether special guardianship is the best way to promote a child's welfare, anyone considering applying for a special guardianship order, needs to understand the nature and long term effect of the order on the child, themselves and other members of their household and how it compares legally to other possible orders/legal arrangements (see chart on Appendix A). In particular they need to understand that a special guardianship order is intended to be until the child reaches 18, gives them the authority to make most but not all decisions about how the child is raised and may enable them to access support, but that this is discretionary. Some kinship foster carers, who are informed about the difference between being a foster carer and a special guardian, are reluctant to move on to acquiring a special guardianship order precisely because they understand that they will lose the right to financial support and access to timely responsive assistance to meet the child's changing needs. Indeed research shows that, in the main, access to support for children in kinship care is determined by legal status rather than the child's needs (Hunt & Waterhouse 2013)[5].

In our experience, prospective special guardians struggle to get the advice they need to make informed decisions about applying for a special guardianship order. 78% of special guardians who responded to the recent survey stated that when they took on

[3] Selwyn J et al (2013) The Poor Relations? Children & Informal Kinship Cares Speak Out (University of Bristol)
[4] Selwyn J, Wijedasa D and Meakings S (2014) Beyond the Adoption Order: challenges, interventions and adoption disruption (DfE & University of Bristol)
[5] Hunt J & Waterhouse S (2013) It's Just Not Fair! Support, need and legal status in family and friends care (FRG)

the care of the children, they felt they did NOT know enough about the legal options and the consequences for support, to make an informed decision (Aziz, 2015).

Social workers often fail to explain and discuss the implications of a special guardianship order and our recent survey reveals that some social workers give inaccurate information due to their own lack of knowledge of special guardianship. Worryingly some special guardians (15%) reported feeling coerced into making the special guardianship application. *"We were told he would be adopted if not, they took him into foster care and would not let us foster him they said that was not an option."*

The survey (Aziz, 2015) found that 54% of special guardians had not received independent advice about applying for a special guardianship order. Many prospective guardian are not eligible for Legal Help (for example if they are working or own their own house). Local authorities sometimes pay for one off legal advice with a solicitor but this is very ad hoc and a single session is often inadequate. Family Rights Group advice service does provide independent legal advice over the phone and website, but funding restrictions and rising demand means that 6 in 10 callers cannot get through to an adviser. Worryingly, DfE funding for the advice service is currently due to end in March 2016, threatening the closure of the service.

Parents also need advice about the nature of the order, what it means for them in terms of their future relationship with the child and their ability to make decisions about how they are raised. They also need an early referral to independent advice when a family group conference[6] is offered so they understand the implications and consequences of not engaging with a family group conference. This should reduce instances of parents obstructing a family group conference from being convened and lead to more effective early identification of potential carers within the family.

We therefore strongly recommend that:

i. The special guardianship guidance is amended to require a social worker to explain the nature of the order, and the alternatives to it, to prospective special guardians, children/young people and parents as soon as this is under consideration and, in any event, once notice has been given of the intention to make an application. Local authorities should invest in training to ensure social workers have the relevant knowledge;
ii. Local authorities are required to produce written, accessible, information for prospective special guardians, parents and children and young people;
iii. The special guardianship regulations (SGR) are amended to require local authorities to refer prospective special guardians and parents to independent sources of advice and advocacy (including the Family Rights Group advice service) as soon as prospective special guardians give notice of their intention to apply for the order;
iv. The DfE urgently addresses the need for continued government funding of the Family Rights Group advice service (which is the only open access, free

[6] Family group conferences are family-led meetings in which family members are supported to get together to make a safe plan for their child which addresses the problems identified by the local authority. More information about FGCs can be found at http://www.frg.org.uk/involving-families/family-group-conferences.

specialist legal advice service for kinship carers seeking a special guardianship order) after March 2016.

2. Help with legal costs including court fees and representation

Regulations[7] gives the local authority the power to pay for legal expenses - including advice, representation and court fees - to assist a prospective special guardian to apply for a special guardianship order. However, it is a postcode lottery as to whether they get such help. This seems particularly unfair for those who are encouraged to apply for a special guardianship order as an alternative to care proceedings or the child being looked after. Moreover, many are ineligible for legal aid (for example if they own their house which puts them out of scope under the means test). Consequently when family members apply for a special guardianship order, many are litigants in person without access to legal representation. This means that many prospective special guardians have to deal with complex legal procedures and case law, at the same time as caring for a traumatised child and coping with other challenges, including difficulties during contact. If the order is opposed they may, as a litigant in person, have to cross examine their own son/daughter/brother/sister about their parenting inadequacies, which can be extremely uncomfortable and intimidating and can exacerbate tensions with the parents which is particularly problematic in terms of the implications for managing future contact between the child and their parents.

With local authorities facing increasing financial challenges, it is likely to become even harder for prospective special guardians to get help with legal costs in the future. Yet without it, the financial cost of applying for the order may prove overwhelming and they may be unable to afford to apply for a special guardianship order despite the benefits it can bring in terms of legal security and stability for the child.

Lack of specialist legal advice and representation impairs not only the prospective special guardian's ability to understand if it is the right order but also their ability to argue their case and to secure the right package of support whilst there's judicial oversight of their case.

We therefore strongly recommend that:

I. Regulation 6 is amended to require the local authority to pay the legal costs of advice and representation and the court fees of the prospective special guardian in all cases where they support the application in order to avert the need for care proceedings or for the child to become looked after and where the child will cease to be looked after by the local authority as a result of a special guardianship order being made.

II. There should also be a review of the availability of non-means tested legal aid for prospective special guardians seeking a special guardianship order and for special guardians who face contact and discharge applications.

[7] Reg 6 SGR

D. Improving practice before a special guardianship order is applied for

1. Permanence planning and special guardianship orders

The local authority is under a duty to make safe plans for children at risk. When there are safeguarding concerns, they must make a child protection plan to keep the child safe; where there are care proceedings they must present a care plan to the court; where the child is looked after they draw up a care plan before or within ten days of the child being looked after and this must be followed by a permanence plan, which can involve the child returning to live with members of their wider family, at the second statutory review. Special guardianship may feature in any of these plans but statutory guidance should underline the fact that:

- special guardianship is a private law order, which the prospective special guardian, not the local authority, applies for and which the court decides whether or not to make applying the welfare principle (s.1 CA 1989); and
- the local authority's role is to assess suitability and to support the parties, which can include managing complex dynamics.

The Research in Practice research report August 2015 (RIP 2015) highlighted that local authorities sometimes felt frustrated when the court took a different view to that which they had planned, for example if the court asks for a late coming family member to be assessed for a special guardianship order when the local authority had already planned adoption. In our view, some of these situations could be avoided if there was:

- more effective work with the family at an early stage to identify all potential wider family placements through the use of a family group conference, as strongly encouraged by pre-proceedings guidance; and
- clearer regulation of viability assessments so that all realistic options for the child within the family network were explored and fairly ruled out before a permanent placement outside the family becomes the plan for the child.

2. Early identification of prospective special guardians – improved use of Family Group conferences (FGCS)

Effectively engaging the wider family at an early stage, when it is first suggested that the child may not be able to remain with their parents, is essential if the right balance is to be struck between ensuring that the child's short and long term welfare needs are met and that they and their family's human rights to family life are respected. This applies to any situation when there is a real possibility that the child may be removed from their parents, whether it results in a special guardianship order or another type of legal order (eg care order, child arrangements order).This has been confirmed both by recent case law, but also by statutory guidance.

Following Re B (A Child) [2013],[8] in the case of Re: B-S (Children) [2013], [9] the Court of Appeal held, amongst other things, that:

[8] Re B (A Child) [2013] UKSC 33
[9] Re B-S [2013] EWCA Civ 1146

- orders contemplating non-consensual adoption are very extreme things, a 'last resort', 'only to be made where nothing else will do'; and
- the court can only reach the conclusion that nothing else will do if it has considered evidence on all the options which are realistically possible, together with an analysis of the arguments for and against each option.

Statutory guidance (Court orders and pre-proceedings, 2014)[10] also says:

- It is important wider family are identified and involved as early as possible as they can play a key role in supporting the child and helping parents address identified problems. Where problems escalate and children cannot remain safely with parents, local authorities should seek to place children with suitable wider family members where it is safe to do so. (para 22)
- Enabling wider family members to contribute to decision-making where there are child protection or welfare concerns, including when the child cannot remain safely with birth parents, is an important part of pre-proceedings planning. (para 24)
- Family group conferences (FGCs) are an important means of involving the family early so that they can provide support to enable the child to remain at home or look at alternative permanence options (para 24).

FGCs are an effective way of not only identifying potential carers within the wider family, even on a contingency basis if the parents have not yet been ruled, but also or giving the family the opportunity to prioritise those that are identified. The earlier the FGC is offered, the sooner viability/suitability assessments can begin, avoiding latecomers within care proceedings.

However, in the absence of any statutory duty to explore wider family or offer the family a family group conference pre-proceedings (or before the child becomes looked after), there is wide variation in the practice of early family work. Some are regularly sending out letters prior to proceedings and offering FGCs. Others still do not have a FGC service or only spot purchase FGCs on a small scale or claim to be holding FGCs but these do not comply with nationally agreed standards. The existing FGC accreditation system, developed by Family Rights Group with DFE funding, is currently being rolled out nationally on a voluntary basis but, like publicly funded mediation, such accreditation needs to be mandatory to have maximum impact.

We therefore recommend that:

I. There should be a new statutory duty on local authorities that when they conclude that a child may need to become *looked after* or become the subject of care proceedings, they must, unless emergency action is required:
   a. identify, and consider the willingness and suitability of any relative, friend or other person connected with the child, to care for them as an alternative to them becoming looked after by unrelated carers; and
   b. offer the child's parents or any other person with parental responsibility a family group conference to develop a plan which will safeguard and promote the child's welfare;

II. The DfE requires family group conference services to be accredited.

10 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/306282/Statutory_guidance_on_court_orders_and_pre-proceedings.pdf

3. Viability assessments

Viability assessments are not a requirement in special guardianship cases. However they are commonly used pre-proceedings or in care proceedings, to ascertain whether a potential kinship carer might be suitable to apply for a SGO. As documented in the Research in Practice research report (2015), they are the most common process for assessing whether a family member is a realistic option to be subject to a full special guardianship assessment. Yet they are practice tools with no statutory basis, have been developed in an ad hoc way with no national consistency, minimum standards or agreed procedures. They can be highly subjective and can vary from a fifteen minute phone call to a full day of assessment with a detailed report. Their use is particularly complex in international cases. Data from a survey of 102 practitioners about their views on viability assessments is set out in Appendix A.

Despite wide variations in practice, these viability assessments are being used to rule out wider family members as being unsuitable. In some circumstances the family members ruled out are unaware of the process for challenging this decision, thus leading to injustices in some cases.[11]

In the case of Re R[12], the Court of Appeal clarified that early viability assessments can properly be used to exclude wider family members at an early stage of the proceedings, provided they are carried out with "an appropriate degree of rigour" (para 64-67). It is therefore imperative that a standardised viability framework is developed and adopted by local authorities and courts.

With support from senior judiciary, the Family Justice Council and other key stakeholders, Family Rights Group is currently setting up a high level working group to develop a standardised viability toolkit. This is likely to comprise

- a viability assessment form, national minimum standards and procedures for viability assessments, which meet the expectations of the courts;
- guidance for social workers on conducting viability assessments, including on the format/methodology and approach used, any limit on the number of family members who can have a viability assessment in any one case, and conducting viability assessments in international cases; and
- a leaflet and on-line resources for families explaining what viability assessments are and how to get further advice about them.

It is hoped that this toolkit will receive widespread endorsement from all key stakeholder including the Family Justice Council, Cafcass and the ADCS so as to achieve national consistency and standards on viability assessments in future.

Angela Joyce from the DfE is on this working group.

We recommend that:

[11] They can complain to the Ombudsman but only after they have exhausted the internal complaints procedures of the local authority, which is time consuming and therefore may be far too slow for the timetable for the child.
[12] Re R (A Child) [2014] EWCA Civ 1625

I. The DfE engages with, endorses and publicises/disseminates the viability assessment toolkit once it is finalised.

II. Regulations and guidance should specify the circumstances in which viability assessments must be carried out and minimum requirements/standards/procedures for how they should be conducted.

4. Assessments for suitability of special guardians

The schedule to the special guardianship regulations clearly sets out the required contents of the local authority suitability report on special guardians. However, the way this is interpreted in practice varies.

Where the local authority has concerns about the child, social workers should provide prospective special guardians with information about the risks, the child's needs and what support could be available to help them address these as part of the assessment process. Indeed, it is essential that special guardians are provided with the same full disclosure as is required for prospective adopters, so that they have a full understanding of what they are committing to when they apply for the order and what support they require for the arrangement to work. One way to achieve this, at least in part, is to share the child's permanence report, which sets out their history and needs (for example in relation to attachment) so they fully understand the needs of the child they are taking on, especially where the child is not already living with them.

The assessment process should involve a dialogue with the child (age appropriate), the parent(s) and the prospective special guardian to help to identify whether the special guardian can meet the child's needs and the support arrangements that need to be in place to make the arrangement work (see 5.1 below). Where there is a pre-existing relationship between the child and the prospective special guardian, social workers need to consider a balancing of issues eg: the importance of existing attachments and relationships against areas where some aspect of the application where does not meet the required minimum standards.

Worryingly, 58% of the special guardians responding to our kinship care survey (Aziz, 2015) said that practitioners were not clear about the factors that they needed to think about when considering whether to apply for a special guardianship order. Specialist kinship/special guardianship teams can have the advantage of greater understanding and insight into the different dynamics that may exist within family placements, including the strengths of such placements, as well as any insurmountable concerns.

There is currently no legal requirement for Disclosure and Barring checks of the prospective special guardian and everyone in their household although this frequently happens in practice.

There appears to be a wide variation in timescales taken for special guardianship order assessments. Some special guardians feel that the process could have been significantly quicker, whereas some practitioners report feeling under pressure from courts to produce reports in what they regard as unrealistically short timescales. The latter can be a result of inadequate early family work or poor co-ordination within the

local authority resulting in a late assessment, or courts feeling that they need to meet the 26 weeks timescale in care proceedings and that the special guardianship order assessment should fit within that, even if a family member has come forward late. Difficulties particularly arise when local authorities or courts become overly fixated by the timescales, potentially at the expense of the child being able to be raised by a suitable carer within their family. Like adoption, special guardianship is a permanence order and, as such, applicants need the same opportunities for reflection about what they are taking on, and social workers need the same opportunities for in-depth assessment of the proposed arrangement. The child may also need time to consider what they want. Decisions of such long-lasting significance should not be rushed through the court process. It should be noted that the Court of Appeal has confirmed in the case of Re: S that the 26 weeks can legitimately be extended to assess a late coming relative[13].

We recommend that

I. special guardianship guidance is amended:
   - to amend these practice points about the assessment process;
   - to require local authorities to prepare and set out full information and history about the child and make it available to the prospective special guardian (equivalent to that in adoption) and
   - to require local authorities to offer prospective special guardians preparation and on-going training about their role including ways to support traumatised children.

II. the Schedule to the special guardianship regulations should be amended to require DBS checks in all cases, to ensure consistent practice and to safeguard the child;

III. there is no change to the timescale for assessment when the prospective special guardian gives notice of their intention to apply for a special guardianship order;

IV. in cases where the prospective special guardian has not applied for the order and instead the court has asked the local authority to assess their suitability to be a special guardian, guidance should clarify appropriate timescales for assessment to be followed (a minimum of three months unless there are exceptional circumstances) and

v. where care proceedings need to be extended beyond 26 weeks in order to provide sufficient time for a special guardianship order assessment to be properly completed, this should not be treated as a failure of the court to meet the target timescale.

E. Special Guardianship Support Service

1. Overarching comments about support

[13] Re S (A Child) [2014] EWCC B44 (Fam)

1.1 Inconsistency in LA duty to assess and plan for support services

The schedule to the special guardianship regulations requires the local authority to include a summary of support services to be provided (if any) in the suitability report to the court[14]. This implies that there should be an assessment of the need for support services in all special guardianship cases, yet the duty to assess the need for support only applies where the child was looked after immediately before the special guardianship order was made[15]. This inconsistency needs to be addressed, particularly as it can severely disadvantage a relative who has stepped in early to apply for a special guardianship order as an alternative to care proceedings or the child becoming looked after, in terms of their and the child's access to support later. According to Wade's (2014) research, 26.5% of children subject to special guardianship orders were NOT looked after immediately prior to the order being made, hence it will not be a significant additional cost to assess all children in special guardianship.

We therefore recommend that:

I. s.14A & F Children Act 1989 should be amended to place a consolidated duty on local authorities to assess the suitability of the special guardian and the need for support by the special guardian, child and parents, in all cases, irrespective of whether the child was previously looked after;
II. Following the assessment, a support plan should be prepared and presented to the court in all cases, irrespective of whether the child was previously looked after (unless no support services are to be provided, in which case the reasons why should be given);
III. Clearer guidance is required on how support plans are developed with the prospective special guardian. As with adoption support plans, there needs to be input from those with specialist knowledge of the issues faced by special guardians and the plan should cover all aspects of need including: promoting positive outcomes (education and health), access to ongoing support including finance, support for contact with parents and other relatives, life story work and, crucially, a contingency plan if there are difficulties;
IV. Support plans should be reviewed after the child has been living with the special guardian for six months, and subsequently annually, to ensure that it continues to reflect the needs of all parties.

1.2 Inadequate provisions of support

Despite the requirement on the local authority to provide a summary of support services to be provided in the court report, the reality is that special guardians report that the support they and the child receive is inadequate or non-existent. 65 % of the 274 special guardians who completed the recent kinship care survey rated their experiences of Children's Services as poor or very poor, compared to only 15% who rated it good or excellent. When asked if there was any support that they did not receive that would have made a difference, 240 special guardians answered, of which only 7% said they didn't need additional help or support. 49% stated that they needed emotional support for themselves and 42% said there should be support for the emotional and behavioural needs of the child/ren (Aziz, 2015).

[14] Para 5, Schedule, Special Guardianship Regulations 2005 (SGR)
[15] S.14F(3) Children Act 1989 and Regulation 11 SGR

This is consistent with research which shows that children in kinship care and their carers often receive little or no support, with those getting the least support from local authorities being the ones who are bringing up the children with the highest levels of emotional and behavioural difficulties. The main determinant of access to support is the child's legal status, in particular whether the child is in or out the care system, rather than their needs (Hunt & Waterhouse 2013).

Even where an assessment has been carried out, there is no requirement on the local authority to provide services to meet identified need, hence support may be provided and then withdrawn (for example as a result of a change of local authority policy) or may not be provided at all. Given local authorities are having to reduce budgets, discretionary special guardianship support is very vulnerable to being cut.

A study of placement breakdown of children subject to special guardianship orders arising from care (Selwyn et al, 2014) found that the early period of placement was particularly vulnerable and thus early support is likely to be critical in preventing breakdowns.

The Government, in recent years, has spearheaded legislative changes and heavily invested monies to ensure that not only is there an increase in the numbers of children adopted but that fewer adoptive placements are at risk of breakdown and that the children's wellbeing is promoted. The Government has rightly recognised that many of these children have suffered significant prior adversities and has introduced new provisions to improve access to support, including an adoption passport, priority school admissions, pupil premium plus, 2 year old free childcare, improved paid employment leave provisions for adopters and the post adoption support fund.

Given that many of the children raised by special guardians have experienced similar adversities to those adopted and have similar needs and that their carers are struggling with many of the same difficulties faced by adopters, it is right that comparable support is extended to these vulnerable children. As the Second Report of the House of Lords Select Committee on Adoption Legislation commented "Children in special guardianship and kinship placements deserve the same support which we recommend for adopted children."[16]

The Government has partially recognised this by extending priority school admissions, pupil premium plus and 2 year old free childcare to children subject to special guardianship orders who were looked after immediately prior to the order. We would argue that by the same logic, other provisions available to adoptees and adopters should be made available ***in all special guardianship cases***.

We therefore recommend that

I. There is a special guardianship passport, akin to the adoption passport, specifying the support they can get from public services, including the local authority, health and education services, schools and government agencies, to help them meet the child's needs; and how they access that support.

[16] Second Report of the House of Lords Select Committee on Adoption Legislation of Session 2012-13: Adoption: Post-Legislative Scrutiny

II. There should be an extension of the priority school admissions, Pupil Premium Plus and free childcare for 2 year olds for 15 hrs p.w to children subject to a special guardianship order who have not been looked immediately before the order was made.
III. There should be a right to a period of paid employment leave and protection for special guardians akin to adoption leave, to prevent special guardians having to leave the labour market and become forced to rely on benefits and endure financial poverty in order to care for the child/ren.
IV. The inspection framework explicitly addresses the delivery of special guardianship support services and the lived experience of all parties in relation to their support needs.
V. The post adoption support fund is extended to enable children subject to special guardianship orders to access the fund. This should be appropriately resourced.

1.3. Improved support and the use of supervision orders alongside special guardianship orders

Typically, local authorities and courts see supervision orders alongside special guardianship orders as a way to monitor the child's safety and well-being. However, feedback from practising lawyers confirms research findings (Hunt and Waterhouse, 2013), that such orders are also used as a legal mechanism for the court to ensure that support, for example with contact arrangements, is provided by the local authority. Their view is that if adequate support provisions were delivered through the special guardianship support plan, fewer supervision orders would be made. Moreover, the making of supervision orders alongside special guardianship orders can create unforeseen problems, for example although special guardians are often the "resolution" to ongoing concerns rather than being part of the problem, the making of public law orders (i.e. a supervision order) can feel to them like a punishment/vote of no confidence/stigmatising.

We are aware that Professor Judith Harwin has been commissioned to undertake further research on the use of supervision orders in special guardianship cases which is exploring these issues further.

We therefore recommend that the special guardianship guidance should be reviewed once Professor Harwin's research is published.

1.4 Duration of special guardianship support services and cross border disputes

There are wide variations in practice about the length of time special guardianship support is provided to a child and their carer. We know of some local authorities that will give a commitment, when a special guardianship order is made, that they will provide support to meet the child's needs until they are 18, subject to annual review of the special guardians' means in relation to financial support. We know of others that refuse to give such a commitment, hence the support provided is vulnerable to being stopped at any point when there is a change of local authority policy/priorities. Individuals whose support is suddenly stopped then have to negotiate with the local authority to secure future support, with varying degrees of success, which adds to the pressures on them and the placement. Moreover, some relatives who want to take on the care of a child under a special guardianship order, but who are aware the

local authority will not give a long term commitment to the principle of providing support, are deterred from applying for the order. Such a postcode lottery doesn't reflect the child or carer's degree of need and therefore is unjust and militates against placement stability and ensuring the child's wellbeing.

The precarious nature of support provision is exacerbated when a previously looked after child moves to live with a special guardian in another authority and there is a difference in approach to support between the two authorities. The Regulations provide that:

- If the child was looked after immediately before the special guardianship order was made, the local authority who was looking after the child is responsible for providing support services, even if the child has moved out of their area since the order was made.[17]
- This responsibility remains with the first local authority for a period of 3 years. After that, responsibility for support passes to the local authority in which the child resides[18], unless financial support was agreed prior to the special guardianship order being made, in which case the responsibility for support remains with the local authority that was looking after the child[19].
- If the child was not looked after, the responsibility for special guardian support lies with the local authority in which the child resides[20].

These responsibilities are clearly set out in the legislation and guidance[21], yet special guardians regularly report that Children's Services Departments will argue over which authority has responsibility, resulting in some children and special guardians not getting support from either local authority to the detriment of the special guardianship arrangement. Litigation on this point has resulted in courts repeatedly saying that this is a matter for the local authorities to work out between themselves, and special guardians should not miss out on support whilst the authorities decide who is responsible.[22]

We therefore recommend that special guardianship regulations and guidance are amended to:

I. Require local authorities to give a written commitment, before the order is made, that support will be provided to meet the child's changing needs until the child's reaches 18, subject to an annual review of the special guardian's means in relation to financial support;
II. Require local authorities to reach an agreement between themselves about responsibility for the provision of support before the order is made, or if the special guardian moves to another local authority after the special guardianship order is made, within 3 months of them moving to that other local authority.

[17] CA s14F and Reg 5 SGR 2005
[18] SGR Reg 5(2)
[19] SGR reg 5(2)
[20] CA s14F
[21] Special Guardianship statutory guidance 2005 para 37
[22] See for example Suffolk CC v Nottinghamshire CC [2012] EWCA Civ 1640

1.5 Support for parents

Unlike adoption cases, there is no provision for parents to be provided with counselling when special guardianship is the plan for their child/ren. It is therefore not surprising that parents in special guardianship cases often do not understand the nature of the order and what it means for them. This can lead to them having unrealistic expectations about their future role in the child's life which can impact negatively on their behaviour particularly during contact arrangements. We know of cases where this has undermined the arrangement to the point that the placement has broken down. 41% of special guardians who responded to our survey (Aziz 2015) said that parents should have advice and support to help them understand what the special guardianship order means and its impact.

We therefore recommend that

I. guidance should clarify that as soon as the prospective special guardian gives notice to the local authority of their intention to apply for the order (see also 1.6 below), all parents should be:
   - provided with information and advice about special guardianship and counselling equivalent to that provided to parents in adoption cases;[23] and
   - referred to sources of independent legal advice; and

II. the support needs of all parents should be assessed (as discussed in section E 1.1 above) and the summary of support services provided in the court report should include support that will be given to them.

1.6 Local authority written information about special guardianship

All involved in special guardianship cases should have access to a written introductory pack including information about the nature of the order, the support available, how they can access support, where they can get independent legal advice about the order and who is the lead officer responsible for special guardianship support services in the area. This should be written for parents, children (in age appropriate language) and prospective special guardians. It should be available in hard copy to be given to each of the parties by the assessor when the local authority prepares its special guardians report for the court. The information should also be available on the local authority website.

We recommend that:

I. Regulations and guidance are amended to require that such written information is published by each local authority.

1.7 How local authorities structure special guardianship support

There is significant variation in how local authorities deliver or commission services to assess potential special guardians or provide post order support. Special guardians have reported the benefits of having a dedicated post order or kinship care support team who have a specialist knowledge and understanding of the needs of children being brought up in kinship care arrangements and the relationship dynamics that may involve. They have emphasised the difference it makes if they

[23] The kind of information that should be provided is outlined in Family Rights Group's advice sheets for parents and special guardians: http://www.frg.org.uk/images/Advice_Sheets/19-special-guardianship-diy-sg.pdf and http://www.frg.org.uk/images/Advice_Sheets/20%20-special-guardianship-for-birth-parents.pdf

have the phone number/contact name of someone that they can reach in the future, should the child's needs change, even if they don't need support now.

We therefore recommend that:

I. The guidance is amended to:
   a. require local authorities to have in place specialist workers who are accessible to parents and special guardians, regardless of the length of time that the order has been existence and the route by which it has been made and
   b. publish information about how the post order team can be contacted both on the Children's Services website and in the written information referred to in 1.6 above.

II. The Ofsted inspection framework should explicitly consider how the local authority is meeting the needs of children under special guardianship orders and their carers.

1.8 Working with other agencies to improve understanding of special guardianship

We regularly advise special guardians who have had difficulties dealing with other agencies who don't seem to understand special guardianship and how it fits with the services they deliver. For example;

- JobcentrePlus: we know of many examples where special guardians have had their benefits reduced because their special guardianship order allowance has wrongly been treated as income;
- Passport Office: we know of special guardians being given conflicting information about what they need to produce as evidence in order to apply for a passport for a child with a special guardianship order or being asked for documents that are not feasible for a special guardian to acquire.
- Schools, further and higher education colleges: we know of some giving the wrong advice about the rights and options of young people who are/have been subject to a special guardianship order.

We recommend that:

I. The DFE liaises with the DWP and the Passport office to ensure their staff receive appropriate training on special guardianship orders and how they should be treated in relation to the services they deliver.

II. That the DFE produces or commissions and disseminates hard copy or on-line information materials on special guardianship for schools, further and higher education.

III. Local authorities provide information and training about special guardianship to all relevant Council Departments and agencies in their area, such as the Housing Department/Housing Associations.

2. Specific support services

The special guardianship support framework already outlines most of the services which are typically needed in special guardianship cases. The problem in the main is a failure of implementation, at least in part due to financial pressures on local authorities. Yet such failure is borne by the child and their special guardian, and

can put the placement at severe risk, and is thus, we would argue, counterproductive.

The kinship care survey (Aziz, 2015) asked special guardians what support they did not receive that would have made a difference in their specific case. The table below sets out the responses. 240 special guardians answered this question, some specifying a number of services.

Is there any support you did not receive but which would have made a difference?		
	Number	% of total respondents
Emotional support for family and friends carer	117	49%
Help with child(ren)'s own behaviour/emotional difficulties	101	42%
Respite care	96	40%
Someone working directly with the child(ren) e.g. on life story	94	39%
Counselling for children	86	36%
Support with managing child(ren)/family contact	87	36%
Contact with other family and friends carers	76	32%
Training courses	75	31%
Counselling for family and friends carer	58	24%
Mediation with other family members	51	21%
Regular contact with child(ren)'s social worker	43	18%
Regular contact with my own social worker/link worker	32	13%
No additional help or support needed	17	7%
Assistance with prison visits	6	2.5%

The survey also asked an open question as to what support special guardians think should be provided. We have categorised their answers as follows:

- Support for parents: 41% said parents need help to understand what the special guardianship order means and its impact, 22% said they need counselling and support groups to improve relationships with the carers/family, 22% said they needed therapeutic support to come to terms with the loss of their child/ren and 13% said they needed support with contact (total 77 responses).

- Support for children: 23% said children under special guardianship orders need the same package of support that looked after children receive, 21%

said they needed child friendly publication/information about the special guardianship process, 18% said they needed counselling, 18% said they needed support groups for children, 12% said therapeutic work (e.g. to deal with feelings of abandonment) and 12% said life story work was needed (total 90 responses).

- Support for special guardians: 26% said that special guardians needed information about their options from the outset, 25% said they need parents to be supported to understand the implications of the SGO, 19% said they needed independent advice, 16% said they needed more than one year of post order support, 13% said they needed ongoing financial support, 8% said advice on benefits, 7% said support with contact, 6% said preparation on what to expect re child's needs, 6% said a phone number contact for post order support, 6% said support groups and 6% said they needed training courses akin to those that foster carers receive (total 154 responses).

2.1 Contact

Special guardians frequently report contact being a source of problems. As stated above, contact is often a trigger for tension when parents do not understand or accept what the special guardianship order means for them and consequently have erroneous expectations about the purpose of contact and their future role in their child's life. Contact between siblings who are not living together can be of huge importance to the children, but can also present challenges.

Despite help with contact being one of the support services the local authority should provide[24], the special guardian is frequently expected to manage such difficulties on their own. This can have disastrous effects in relation to family dynamics. Special guardians need far more support than is currently offered to manage contact arrangements and to support the child before, during and after contact, particularly at the outset when the parties are adjusting to the new arrangements,.

It is uncommon for referrals to be made to mediation in special guardianship cases despite the fact that means tested legal aid is available if the dispute is capable of being resolved by a court. We understand that Essex regularly refers special guardians to mediation to resolve contact difficulties, with positive results. In our view much more use could be made of mediation services.

Therapy and counselling can also help to minimise tensions between special guardianship and parents and young people which in turn can positively impact on contact arrangements both in the short term and staving off longer term disputes and risks of future private law litigation.

We therefore recommend that the special guardianship guidance is amended so that, during the assessment of support needs and subsequent delivery of support services, far greater emphasis is placed on:

I. exploring and supporting the specific contact needs of individual children, parents and special guardians including children's contact with siblings who

[24] Reg 3 SGR

may be in care or have remained with (or subsequently been born to) birth parents;

II. providing timely therapeutic and mediation support as required; and

III. giving special guardians more advice on managing contact and signposting to mediation to try to resolve tensions and disputes over contact.

2.2 Support groups/peer support

The above data highlights special guardians' views about the acute need for emotional support both for them and the children they are raising and also the parents. This can be delivered in a number of ways: individual therapy (see 2.3 below) and also peer support for example through befriending schemes, fun days, and support groups.

The local authority is required to provide support groups for special guardians, children subject to special guardianship orders and parents.[25] However, we are unaware of any local authority running or commissioning support groups for parents and there is less than a handful of local groups for children subject to a special guardianship order or living in other kinship care arrangements. Even support groups for special guardians are still not the norm although some local authorities, such as the London Borough of Islington, have supported very active special guardianship groups, whilst Worcestershire and Leeds have local kinship care support groups which include special guardians and others under different legal arrangements.

We recommend that the guidance should be amended to:

I. emphasise the benefits that support groups and other peer support activities can bring; and

II. require local authorities to set them up or commission and publicise them with the relevant parties. This publicity material should be included in the special guardianship passport and written information about special guardians referred to in Section E.1 above.

2.3 Therapeutic support for the child

Children subject to special guardianship orders often have emotional and behaviour problems as a result of past adverse experiences. Their need for therapeutic input may be immediate or it may be after they have settled in with the carers, for example as they become adolescents. However, they do not get the priority access to specialist CAMHS services that a looked after child would and local authorities often don't fund recovery therapies.

Moreover, special guardians have emphasised the lack of help they receive with life story work and that they would welcome assistance. Children under a special guardian orders, like those who are looked, should have a life story book to help them make sense of their journey to a special guardianship order; and their special guardians need to be helped and supported to share difficult stories with the children.

We therefore recommend that:

[25] Reg 3 SGR

i. The assessment of the child's support needs should include an assessment of their need for therapy
ii. Therapy should be provided to meet identified needs, for example, through the extension of the post adoption support fund to children subject to special guardianship orders;
iii. Local authorities should be required to provide training and support for special guardians to cover life story work
iv. Support plans for children under a special guardianship order should cover life story work (as recommended in E 1.1).

2.4 Other non financial support

It is critical that the support plan also include other services which meet the specific needs of the parties identified in the assessment. Such services may be provided by the local authority or by other national or local agencies, for:

- the child (such as bereavement support, support for special needs);
- the special guardian (such as help with child care, baby sitting, advice on benefits (e.g. the welfare benefits helplines run by The Grandparents' Association and Grandparents Plus) and other sources of financial help, help with housing, social work support with their own children's adjustment to their new situation); and
- the parent (such as help with alcohol and drug misuse, support with domestic abuse).

We recommend that the guidance is amended to:

I. emphasise the importance of the support plan comprehensively meeting the needs of all the parties in the case; and
II. ensure all parties are referred to appropriate support where this is not provided directly by the local authority.

3. Financial Support

3.1 Local authority financial support

There is considerable disparity in the rates paid for special guardianship order allowances across the country. It was held in the Lewisham judgment that, in devising a scheme under which special guardians were paid by reference to adoption allowances rather than fostering allowances, the local authority had acted unlawfully.[26] Despite this, we hear frequent reports of special guardianship order allowances being paid at lower rates than fostering allowances.

One colleague gave us the following example:

[26] R (on the application of B) (Claimant) v LEWISHAM LONDON BOROUGH COUNCIL (Defendant) & MB (Interested Party) (2008) [2008] EWHC 738 (Admin); Family law July 08 640 (Black J) 17/4/2008. See also R (on the application of TT) v London Borough of Merton [2012] EWHC 2055 (Admin)

'In local authority A and B a carer for a sibling group of 3 + gets approx. £260 per week extra as foster carers for taking on a sibling group on top of the usual allowances. But not if they are a special guardian. The message [is] that they will be paid for 2 years and that's it or until start school

"The policy coming out of local authorities C, D and E is that because the child doesn't have special needs no payment will be made'

The Local Government Ombudsman also highlighted the unlawful practice of Liverpool City Council in his 2013 report on an investigation into complaint no. 12 006 209. The Ombudsman found that the local authority practice of deducting child benefit from the special guardianship order allowance of a special guardian receiving Income Support was unlawful.

Some special guardians have recently reported to us that they have suddenly received a notice from the local authority that their financial allowance will reduce or end, without the local authority explaining the rationale for this change or they have suddenly had their allowance stopped without notification. The absence of an adequate explanation makes it harder for special guardians to challenge the decision, since they are not clear whether it is a bureaucratic error, or a change in local authority policy.

We recommend that there is a national framework for financial support for special guardianship cases to provide clarity for local authorities and special guardians rather than the current postcode lottery. This should include comprehensive guidance on:

- How calculations of financial support should be undertaken following a standardised means test, benchmarked to fostering allowances as stated in the Lewisham judgement;
- How financial reviews should be undertaken; and
- The importance of considering one off payments to help the arrangements work (eg for beds, a larger car).

We also refer to our recommendation in Section E 1.4 above in relation to the duration of financial support.

3.2 Welfare reforms and special guardians

By becoming the full-time carer of a child or children, often in an emergency, kinship carers, including special guardians, face significant additional costs both in terms of equipment needed (e.g. beds, school uniform, and larger car) and maintenance costs. They are often taking on the child/children, such as their niece and nephew, alongside already raising their own birth children. Their family size increases, and can even double overnight. They do not qualify for paid time off work to settle the children in, equivalent to adoption leave. 43% of special guardians have had to give up work permanently to take on the children (Aziz, 2015). Many are thus being forced onto benefits.

Special guardians can claim child benefit and child tax credit for the children they take-in, as well as being able to add those children to their housing benefit claim. We are

however, concerned about the impact on some special guardians of the spare room subsidy (also known as the 'bedroom tax'), the benefit cap and the lowering of the earning level above which child tax credit is lost. Moreover, we are extremely worried about how the proposals in the Welfare Reform and Work Bill 2015, to reduce the benefit cap further and limit child tax credits to 2 children, will affect existing and prospective special guardians. 32% of the special guardians who responded to our survey said they currently received housing benefit and 62% said they currently received child tax credits (Aziz, 2015).

We fear that the proposed reduction in the benefit cap (from £26,000 to £23,000 in London and to £20,000 elsewhere) will mean some kinship carers will be forced into severe debt and have to move home, away from their own children's school and, critically, away from their support network.

The limiting of tax credits could plunge new special guardians into severe poverty and may even jeopardise some placements. Moreover, it could significantly deter some relatives from coming forward as potential special guardians, particularly for siblings groups. As a result, it is highly likely that more children will be taken or remain into foster care, at significant additional cost to the taxpayer.

During the passage of the Welfare Reform Bill 2010 through Parliament, Ministers agreed to exempt kinship carers from conditionality requirements (including looking for work) for a year after they take on the care of a child, and this change has been implemented. This was a significant step towards recognising the particular circumstances that kinship carers face, and the valuable contribution they make. There is therefore a precedent for the exemptions we are requesting. Moreover, we believe it is consistent with the Government's Family Test on stable and strong family relationships.

We therefore recommend that the DfE and DWP should work together to ensure consistent support for special guardians and other kinship carers, by

I. exempting special guardians from:
   - **a.** the benefit cap
   - **b.** the proposed two children tax credit limit, by including kinship care in the category of 'exceptional circumstances' and

II. reviewing the impact of other recent or proposed benefit and tax credit reforms on special guardians.

3.3 Post 18 support

We recommend that:

1. There needs to be clearer guidance and strengthening of entitlement to leaving care provisions for previously looked after young people now under a special guardianship order so they are not disadvantaged when they reach 18 by their change of legal status, for example, 'staying put,';
2. There should be clear written information for special guardians and young people about how they can access support for higher education and training, including how they make acquire the status of 'independent student' when applying for a loan/grant.

F. Other legal and practice changes

1. Interim SGOs/Placement for special guardianship order

We are aware of concerns raised by local authorities that in some cases special guardianship orders have been made in favour of relatives whom the child barely knows and that it has been mooted that consideration should be given to either there being an interim special guardianship order or there being a system of placement for special guardianship order akin to adoption placement orders, before a final special guardianship order can be made.

There are some cases when it may not be appropriate to make a special guardianship order immediately, for example, where the child does not know or has not lived with the prospective special guardian. However, **we do not think that any changes in law are required** because the existing legal framework allows for such 'placements' to be tested and monitored before the final special guardianship order is made. This can be achieved either through an interim care order or an interim child arrangements order[27] (sometimes combined with a supervision order), under which the child is placed with or lives with the prospective special guardian. This arrangement can be assessed/monitored by the local authority, pending the making of the final special guardianship order, as necessary.

In our view it is a legal nonsense to have an interim special guardianship order as the nature of the order is long term so a temporary, long term order is a contradiction in terms. It would also result in greater delay for the child before a final decision was made. Moreover, there are also several disadvantages to the idea of placement for special guardianship akin to a placement for adoption:

- A special guardianship placement order made on the application of the local authority would potentially move special guardianship out of the private law menu of orders making it much more akin to adoption and public law proceedings. It is unclear how this would work if the local authority did not support the placement - could a court still make a special guardianship order where there had been no placement order first?
- For special guardianship to become a two stage process (or three, including statutory suitability assessment prior to making an application) would be overly complicated. In addition, there is no requirement for the parent to consent to special guardianship as there is in adoption cases, so what test would be applied at the placement stage? If it was the welfare test, this would in effect be making a final order. If it was to be dealt with in the same way as an application for an interim order, then there are already legal options available as outlined above.
- In the context of private law proceedings, a mandatory placement process would create considerable difficulties, particularly disruption for the child if the final order was not made.
- If a special guardianship placement order application was heard after care proceedings are finished, the special guardian and birth parents are unlikely to be legally represented and would therefore not have assistance to present legal

[27] One of the disadvantages at the moment to an interim child arrangements order being made is that it can negate the right of a previously looked after children to assessment for support. However, if the recommendations made in section E are implemented, this would remove this obstacle to consideration of interim child arrangements orders for a child.

arguments about which is the right order and more importantly their need for the right support package.

We recommend that the DFE commissions a feasibility study about the best way for the courts and local authorities to approach cases where the child has no established relationship with the prospective special guardian.

2. Use of special guardianship orders for babies and young children

Some concerns have been expressed by practitioners, for example in the 2015 Research in Practice report, that special guardianship is unsuitable for babies and younger children. We would challenge why this should be so as a matter of principle. The order will only be made if the court considers this would safeguard and promote their welfare and, as with adoption, it enables a young child to live in a secure placement until adulthood. Moreover, it has the added advantage, that if it is a loving relation whom the baby/young child already knows or has lived with, then it can involve significantly less early disruption for the child than a normal adoption placement. As described in section B, there is research on the benefits to the child of being raised in a kinship care arrangement (which the great majority of special guardianship arrangements are), which also respects their right to family life and providing them a strong sense of their own identify. We therefore feel that such concerns are misplaced.

3. Consistency between different statutory guidance

There are three volumes of statutory guidance which have particular relevance to special guardianship cases:

- Court orders and pre-proceedings (2014) which details in chapter 2 the kind of early family work which is needed to identify suitable family members in a timely way when a child cannot remain with their parents;
- Family and Friends Care Guidance (2010) which requires all local authorities to have a family and friends care policy and to provide support to all kinship carers, including special guardians; and
- Special guardianship (2005) which provides detail about how SG support services should be delivered.

We strongly recommend that when the special guardianship order guidance is revised, it:

I. cross refers to and is consistent with this other guidance;
II. restates the requirement in family and friends care guidance that each local authority should have a policy on family and friend care (including special guardians) and reinforces this by regulation; and
III. includes a requirement that each local authority should have a comprehensive training programme for childcare workers on permanence planning to facilitate their understanding and practice around special guardianship.

4. Party status for prospective special guardians who are not applicants

It is not uncommon for the court to ask the local authority in care proceedings to prepare a suitability report on prospective special guardians who are not parties to the proceedings. This means that the parties are very unlikely to be present in court

to argue for an effective support package or have any input into making suitable contact arrangements when the order is made, leading to subsequent problems.

We therefore recommend that prospective special guardians should always be made a party to proceedings, with appropriate notice being given, before a final special guardianship order can be made.

Appendix A: Data from FRG practitioner survey on viability assessments

In a period of 8 days in July 2015, 102 practitioners commented on their experience of at least 1000 cases over the last year. A quarter of those who responded to the survey had dealt with more than 20 cases involving viability assessments in the last 12 months. The respondents were as follows:

- social workers and social work managers (56)
- solicitors/barristers (15),
- guardians (7)
- independent social workers/assessors (7)
- Family Group Conference coordinators/managers (7),
- Independent reviewing officers (3),
- kinship care support teams (2),
- family members (2) and
- others (2)

Their responses were as follows:

1. 92% thought there should be greater consistency in the way viability assessments are conducted. Common reasons given were that:

- viability assessments are too brief, don't pick up on the essentials and/or are entirely reliant upon information in written files only with no contact with the potential carer;
- there is a wide variation in practice between teams within the local authority and between local authorities, for example what is considered an acceptable age for a potential carer, how much information is required about finances, employment and understanding and knowledge of risks, what standard should be applied regarding offences and smoking, and what is the minimum required to pass/fail a viability – at present the assessor personal views may determine the outcome;
- the current system feels unfair and is a 'postcode lottery'.

The small number who did not feel this toolkit was necessary said that this was because they had already developed a consistent document with consensus from all key local agencies including the courts.

2. The following methods/approaches to conducting viability assessments were identified (respondents could choose multiple answers here so their responses reflect their range of experiences in their caseloads)

- Phone call only 35%
- Assessor had undertaken at least one visit with no clear criteria/guidelines (52%)
- Assessor had undertaken at least one visit with clear criteria/guidelines (63%)
- Use of viability assessment template (68%)
- Information for families about what to expect from a viability assessment (32%)
- Other (8%) including that it was undertaken as a paper exercise only with no phone call or face to face meeting with the potential carer.

3. 62% said that viability assessments are routinely undertaken at the pre-proceedings stage.

4. 55% had undertaken viability assessments of relatives abroad, with 40% of these assessments being conducted by phone and 44% involving a visit. 61% used interpreters for these assessments, but 6% said they did not use interpreters and one said the wrong interpreter was used, making communication difficult.

5. 31% said that limits were imposed on the number of relatives who could be assessed as viable carers. In 67% of cases where there was a limit, this was decided by the local authority and in 17% of cases by the court. Those most common limit was between two and four family members. One commented that this was determined by time limits and another said it depended on the whim of the local authority. Another said there was no limit but that they ask the family to identify the three most viable relatives. A quarter said that they were aware of relatives being ruled out because of that limit.

This initial data suggests that there is a core problem of lack of consistency and fairness in the way viability assessments are conducted, that there is an appetite for change and also that there is good practice out there which can be built upon.

Appendix B: Features of typical legal statuses of a child living in family and friends care

	Informal arrangements incl private fostering	**Children on Emergency Protection Orders and Care Orders**	**Children accommodated by Children's Services**	**Residence order/Child Arrangements Order (saying who the child should live with)**	**Special Guardianship Order**
Who has PR?	Mothers, fathers/anyone else who has acquired PR by court order or agreement with parents	Local Authority (LA); Mothers, fathers/anyone else who has acquired PR by court order or agreement with parents	Mothers, fathers/anyone else who has acquired PR by court order or agreement with parents	Person with RO/CAO; mothers, fathers/anyone else who has acquired PR by court order or agreement with parents	Person with SGO who can exercise PR to exclusion of anyone else with PR; mothers, fathers/anyone else who has acquired PR by court order or agreement with parents
Who can make decisions on behalf of the child?	Carer can make day to day decisions about child's care but only those with PR can make important decisions e.g.: consent to medical treatment, leaving the UK etc	Carer can make day to day decisions about the child's care in consultation with LA, but LA makes all important decisions about child in consultation with parents or carers	Carer can make day to day decisions about the child's care in consultation with LA, but only those with PR can consent to medical treatment, leaving UK etc.	Person with RO /CAO can make decisions without having to consult others with PR (although should for important decisions) but some restrictions e.g.: name change, consent to adoption/ placement, change of religion	Person with SGO who has right to exercise PR to exclusion of anyone else with PR, but some restrictions e.g.: name change, consent to adoption or adoption placement, change of religion
Can the child be removed from me?	Yes by person with Parental Responsibility (PR)	Yes by LA	Yes by person with PR	No unless RO/CAO revoked or LA has EPO or CO	No unless SGO revoked or LA has Emergency Protection Order of Care Order
Can I take the child out of the UK?	Only with consent of all those with PR, or leave of court.	Only with consent of LA for up to 1 month, unless court gives leave	Only with consent of all those with PR or leave of court	For up to one month, otherwise consent of all those with PR or leave of court required	For up to three months, otherwise consent of all those with PR or leave of court required
Can I appoint a guardian?	Parents with PR/guardians can appoint a guardian – seek further advice on when appointment takes effect	Parents with PR/guardians can appoint a guardian – seek further advice on when appointment takes effect	Parents with PR/guardians can appoint a guardian – seek further advice on when appointment takes effect	No, person with RO/CAO cannot appoint guardian but parents with PR/guardians can appoint a guardian – seek further advice on when appointment takes effect	SGO holders can appoint a guardian – seek further advice on when appointment takes effect
Can the order be revoked?	N/A	Yes on application to court	N/A	Yes – parents and others with PR have a right to apply to revoke the order	Yes but parents need leave to apply to revoke the order - only granted if there is significant change of circumstances
Am I entitled to support?	Discretionary support under s.17, subject to assessment	Fostering allowance payable to LA approved foster carers	Fostering allowance payable to LA approved foster carers	Discretionary support under s.17 and residence order allowance, subject to assessment	Discretionary support under SG support services, subject to assessment – entitlement to assessment for SG's, child and parents