



RiR 2017:33

Oversight of legal representatives and municipal chief guardians

– the central government’s lack of responsibility for the most vulnerable in society

Summary and recommendations

Background and motivation

About two per cent of Sweden’s population has a mentor, administrator or other legal representative. Those in need of a legal representative are individuals with mental illnesses, various disabilities, dementia or generally weakened health, children whose parents cannot act as legal representatives, or unaccompanied minors. Many are in a vulnerable situation and in need of other people to manage their everyday life. A legal representative is publicly appointed for them in order to safeguard their personal, financial and legal interests. Municipal chief guardians ensure that legal representatives fulfil their remit adequately. In turn, regional county administrative boards oversee the chief guardians.

There are several problems and deficiencies in the guardianship system, and examples of individuals suffering financial, personal or legal injury appear regularly. The system largely rests on voluntary initiatives by private citizens. However, the number of people needing more far-reaching support has steadily increased, which has made it more

difficult for chief guardians to find suitable legal representatives for those in need. The responsibility for the legal security of the system as a whole rests on the central government.

Audit questions and criteria

The overall purpose of the audit is to assess whether central government has created conditions to ensure that oversight of legal representatives and chief guardians is conducted in a legally secure manner. The audit answers the following questions:

- How do the activities of the municipal chief guardians differ, and are there deficiencies regarding legal security and efficiency?
- What central government initiatives exist, and how are they coordinated?
- Does central government promote legal security?

In the audit, the central government initiatives are assessed partly in comparison with other central government oversight activities, and partly in comparison with corresponding systems in other Nordic countries.

Audit findings

The guardianship system is vulnerable, since development in the area largely depends on volunteers and dedicated individuals. The audit's overall conclusion is that the central government needs to take much greater responsibility. The oversight of legal representatives and chief guardians is one of very few areas of public oversight where there is no central government agency with overall responsibility. Several problems that emerged in the audit can be linked to this deficiency. Although the county administrative boards have been given greater responsibility for oversight guidance in addition to operative oversight, they do not have the legitimacy or staff resources to perform their national assignments. At the same time, there are great differences in the processing and assessment of cases by the chief guardians on the municipal level, which puts legal security at risk.

The trend towards greater numbers of complex cases and difficulties in recruiting legal representatives has led to an increasing number of employed legal representatives, in relation to those engaged on a voluntary basis. However, the system is not designed in a way that makes it clear when and how such employment should be regulated. Hence there are deficiencies not only in the oversight of legal representatives and chief guardians, but also in the design of the system as a whole.

Recommendations

The audit findings and conclusions lead to the following recommendations:

1. The Government should set up an inquiry to review the system as a whole, using the Swedish National Audit Office's reports and the design of the systems in Norway, Finland and Denmark as its starting points. The inquiry should:
 - analyse and identify which particular forms of guardianship that could be performed by professionals, in order to ensure supply of legal representatives for individuals in need of one
 - propose where such professional legal representatives should have their employment
 - based on the results of the above, propose how oversight in the area should best be organised
 - identify and propose a central administrative authority to be responsible for oversight. The remit should include monitoring developments, compiling official statistics, coordinating training and providing advice and support in the area.
2. The Government should take a position on the material compiled by the Swedish Pensions Agency concerning a national registry of guardianships and task a central government agency to produce and administer it.
3. The Government should, in the short term, give one of the county administrative boards the main responsibility for the coordination of oversight, training, statistics and advice and support given on the regional level.