

Considering the case for parity in policy and practice between adoption and special guardianship: findings from a population wide study

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Adoption is frequently regarded as the gold standard for young children unable to remain with their birth parents due to significant harm. It provides lifelong legal permanence and with its very low disruption rates, successive governments have invested heavily in supporting its development to maximise uptake and ensure sustainability. Yet as we elaborate in this article, it appears that special guardianship orders (SGOs) are as useful and acceptable to courts and local authorities as adoption. In this article we engage with the recent Department for Education (DfE) review of special guardianship ([2015] Special guardianship review: report on findings – government response, www.gov.uk/government/consultations/special-guardianship-review) and the latest government announcement to make fundamental changes to adoption law, substantially increase the adoption support funding and enable earlier access to therapy (see above p 235). These planned reforms form the wider context to this article in which we report our own findings from a national study of supervision orders and special guardianship. The study provides additional important insights into the use of both these order types.

We ask whether the national evidence suggests that it is time to consider the case for parity between special guardianship and adoption by rebalancing and aligning policy, practice recognition and support. National studies based on population-wide data are vital in providing a robust evidence base for policy and practice. They remove the problems of ensuring the sample is representative and can also clarify the extent to which concerns identified by practitioners and researchers are widespread and of sufficient significance to merit further investigation. It seems likely that family justice policy in the future will increasingly demand evidence from total populations to underpin its strategic development (Nuffield Foundation [2015], <http://www.nuffieldfoundation.org/towards-family-justice-observatory>).

About the study

Funded by the Nuffield Foundation, this study is a two-phase evaluation of supervision orders and special guardianship. Phase 1 has mapped the volume and trends in the use of special guardianship between April 2007 and March 2015 and examined ratios of use in comparison to other legal permanency options. Full details and results are provided in a briefing paper (Harwin et al [2015] 'A national study of the usage of supervision orders and special guardianship over time (2007–2016): briefing paper no 1' <http://www.nuffieldfoundation.org/supervision-orders>). Phase 2 aims to chart national disruption patterns of special guardianship as part of a wider inquiry tracking individual pathways and legal outcomes for every child placed on a supervision order during our observational window, either as a standalone order or when used in combination with special guardianship.

Phase 1 data is derived exclusively from the Cafcass administrative Case Management System first pioneered in a related major national study of recurrent care proceedings (Broadhurst et al 'Connecting events in time to identify a hidden population: birth mothers and their children in recurrent care proceedings in England' (2015) 45 *British Journal of Social Work* 2241), with the most recent data derived from the Cafcass Electronic Case Management System. Both studies indicate what can be gained when administrative data is restructured to answer questions regarding

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patterns and outcomes of family justice. For this study the analytic focus is on the child rather than the mother, who is the unit of analysis in the recurrent care proceedings study. Data has been extracted and restructured to enable us to report on children's legal applications and orders and it focuses on children brought before the courts because of serious safeguarding issues. To this end the inclusion criteria were that:

- at least one child was included in the case (a set of child proceedings);
- the case included at least one s 31 (care or supervision) or placement application;
- the start date of the first application in a set of child proceedings was during the research observation window (1 April 2007 – 31 March 2015).

Six legal orders were selected for the analysis. They were placement, care, supervision, order or no order, special guardianship and residence/child arrangements. All were concerned with facilitating legal permanency.

The sample comprised 130,293 sets of public law child proceedings issued between 1 April 2007 and 31 March 2015. Over this time period, 88.5% (N=115,348) of these cases were completed. Completed cases referred to sets of proceedings where the case completion date had been entered onto the Cafcass database and fell within the research observation window. The remainder were classified as ongoing cases. Legal order data was available on 90.7% (N=104,618) of the completed cases. The reasons for missing information were that the legal order was unknown, not stated, or was not one of our six order types (see technical appendix available at <http://wp.lancs.ac.uk/recurrent-care/resources-and-links/>). In this article we focus only on the 5-year period April 2010 to March 2015 to capture the most recent trends before and after the introduction of the Children and Families Act 2014.

This is the first time that the Cafcass database has been used to investigate special guardianship nationally. The earlier studies by Wade et al ([2014] 'Investigating special guardianship: experiences, challenges and outcomes' DFE-RR372, <https://www.gov.uk/government/publications/investigating-special-guardianship>) and Selwyn and Masson ('Adoption, special guardianship and residence orders: a comparison of disruption rates' [2014] Fam Law 1709) used alternative data sources such as the DfE national SSDA903 database. Each source has its strengths and limitations. The advantages of the Cafcass database are that it provides a complete record of all care, supervision and placement applications and orders and private law applications for special guardianship and residence/child arrangement orders. But adoption data is not complete as Cafcass is not routinely involved in all adoption cases. However, as described in the study of recurrent care applications, placement order data can be used as a reliable proxy for a plan for adoption. For this reason we have concentrated on placement applications and orders.

Findings

The near convergence in national use of special guardianship and placement orders

Our study has both confirmed the latest DfE review findings and the Adoption Leadership Board statistics ([2015] 'Adoption Leadership Board headline measures and business intelligence: quarter 4 2014 to 2015 update' <https://www.gov.uk/government/publications/adoption-leadership-board-quarterly-data-reports-2015-to-2016>) and *added important fresh information* on the use of special guardianship. Confirming the increasing use of special guardianship reported by the DfE review, our data shows that the number of children on special guardianship orders more than doubled between 2010/11 and 2014/15 (1,528 v 3,591). The numbers in 2013/14 were the highest ever recorded. Given the observational window selected, this upward trend cannot be attributed to the initial embedding of new legislation. Rather, it indicates the value of special guardianship to families, local authorities and the courts.

Moreover, our analysis comparing SGOs with placement orders over the last 5 years does not simply reflect more children entering care, rather it suggests a striking shift in the pattern of use of the range of permanency options. What we are seeing for the first time ever is a near convergence in the percentage of children subject to special guardianship and placement orders. SGOs were made for 20.1% of all children subject to s 31 care or supervision or placement applications in 2014/15, less than 1% difference in the proportion given a placement order (20.9%). It is also the first time that this near convergence in the numbers of special guardianship (3,591) and placement orders (3,749) has been found. After care orders, SGOs and placement orders were the next most frequent disposals in 2014/15. This changing trend in ratio of use of SGOs and placement orders which began in 2012/13 and accelerated most rapidly in the subsequent two years, lends weight to the view that special guardianship is being used increasingly as an alternative to the adoption route. Moreover, the drop in placement orders is likely to continue in 2015/16 as placement applications continued to fall in 2014/15.

A sharp rise in the use of supervision orders attached to special guardianship

Our national population-wide results show very clearly the steady rise in the use of supervision orders attached to SGOs – up from 11.2% in 2010/11 to 28.7% in 2014/15. Importantly, and a new insight from this study, this pattern runs counter to use of stand-alone supervision orders. The ratio of use of supervision orders when compared to the five other legal order types has remained almost flat over the five years, staying between 13.1% and 13.8%. It is not clear why there has been an increase in supervision orders attached to SGOs and whether this is a worrying trend. Suggested reasons for attaching supervision orders are: when prospective special guardians live in a different local authority; to manage birth parent contact; because of concerns about the placement; and to provide an introductory framework where children have not yet moved to the placement. There is a lack of evidence on the extent to which supervision orders are a successful mechanism for dealing with these issues. This will be explored in our study.

Surprising results regarding infants: SGOs made in combination with SOs are less likely for infants

The DfE review reported a 65% rise in infants under-one ceasing to be cared for through a SGO between 2012/13 and 2013/14. Our data also confirm this trend and provides unexpected important new insights. Paradoxically, it shows that in 2014/15 an attached supervision order was less likely to be made for infants (23.6%) than for children aged 1–4 (32.3%) or five or above (27.1%). However, over the 5-year period the data shows a particularly rapid increase in the use of SGOs with attached supervision orders for infants.

Variations by DfE region in SGO use

The national trends from our data outlined above mask important but unexplained regional variations in use of SGOs on their own or with attached supervision orders. Over the last three years the percentages show that outer London had the highest utilisation of SGOs (25.2% in 2014/15) and, together with inner London, was least likely to make placement orders. The West Midlands were least likely to make an SGO over the last three years. In 2014/15 the East Midlands were most likely to attach supervision orders (46.7%) to SGOs. Further work will be done on this analysis to understand these patterns.

Does the data show any influence of *Re B*, *Re B-S* and the Children and Families Act 2014?

This is a complicated question and it is difficult to attribute to a single cause, although the impact of the *Re B* and *Re B-S* judgments has been extremely influential, prompting local authorities to consider all options. Our data demonstrates mixed findings for a *Re B/Re B-S* effect on age

Considering the case for parity in policy and practice between adoption and special guardianship: findings from a population wide study and order type. Nationally, the change in the proportionate use of special guardianship when compared directly with placement orders was less significant between 2010/11–2012/13 than between 2012/13–2014/15. Notably, this pattern also applied to the under-ones on both SGOs and placement orders even though there has been an increase in the number of orders being made for under-ones in general. There was a clear message from the President of the Family Division that adoption is not the only way forward for infants. This may help explain why placement applications and orders have reduced since 2012/13. Finally, the practice of attaching a supervision order to an SGO has been a stable increasing trend since 2010/11 and, therefore, does not appear to directly relate to *Re B/Re B-S* or the Children and Families Act 2014. On the other hand, it is possible that pressure to complete cases within 26 weeks helps explain the upwards growth of attaching supervision orders to SGOs. It provides a mechanism to iron out problems by extending the monitoring period after the SGO has been granted.

Implications for policy and practice

The findings from our own study and other sources lead to one clear conclusion. Special guardianship is now perceived by courts and local authorities as a valid, widely used and important alternative to adoption, however young the child. Indeed, practice is now ahead of the regulatory framework of 2005 that identified SGOs as an option for older children. For those who view adoption as the gold standard, the clear shift in practice by courts and local authorities may be concerning. Falls in adoption are also widely reported by the national media as intrinsically problematic. Others will view the rise of special guardianship as a necessary rebalancing of practice that widens the menu of legal permanence options for children, rests on Art 8 rights to preserve family ties and avoids what has been described as 'forced adoption' that may result in further pregnancies and repeat removal proceedings. Recent successful challenges by birth family members to oppose the making of an adoption order may reflect changing views on Art 8 rights and adoption (such as *Re W (Adoption Application: Reunification with Family of Origin)* [2015] EWHC 2039, [2016] 1 FLR (forthcoming and reported at [2015] Fam Law 1318) and *Re LG (Adoption: Leave to Oppose)* [2015] EWFC 52, [2016] 1 FLR (forthcoming and reported at [2015] Fam Law 1039)).

The government has stated its commitment to strengthening both special guardianship and adoption. Measures to improve the special guardianship legislative framework and supports to special guardians will be announced in 2016. More information is available on the government's latest intentions for adoption. Funding is to be increased to £200m to improve, inter alia, processes, support and the extension of the Adoption Support Fund to allow earlier access to therapy. There is also an intention to introduce fundamental legislative reform although this needs elaboration. A key question raised by our comparison of national trends on the use of placement orders and SGOs is whether there is now a strong case to fully align policy, the support infrastructure and practice recognition of special guardianship with adoption strategy to achieve parity. It is clearly premature to take a position on this issue. However, if the playing field were level, it would enable a more realistic comparison of the outcomes and respective merits of the two legal permanency options.

Next issue – J Harwin and others, 'Spotlight on supervision orders – what do we know and what do we need to know?'