

Spotlight on supervision orders: what do we know and what do we need to know?

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Supervision orders have been in the news recently after a freedom of information request to the Child and Family Court Advisory Service (Cafcass) found their use, when attached to a special guardianship order, had more than doubled in the last five years. A spotlight on supervision orders is very unusual. As this article will reveal, these orders are largely 'under the radar' in so many crucial ways. We tease out the range of gaps in our knowledge and understanding of the contribution of supervision orders. We conclude by identifying what we need to know and how a major new national study we are conducting, funded by the Nuffield Foundation and located in five participating local authorities is helping address these significant gaps. The goal is to inform family justice policy, practice and service development and to generate robust population wide evidence on whether there is a need to strengthen the regulatory framework.

Are supervision orders worth the paper they are written on?

Views on the value of supervision orders are highly contested. As early as 1994, they were described in case law as a 'relatively feeble tool'. Just 5 years later, a major evaluation of the Children Act 1989 concluded that consideration needed to be given to how supervision orders could be made 'more robust and useful' (Hunt et al, 'The last resort: child protection, the courts and the 1989 Children Act' (TSO, 1999)). Yet in 2011 the Family Justice Review (MOJ, 2011) 'Family Justice Review: final report' www.gov.uk/government/publications/family-justice-review-final-report) concluded that it did not have the evidence to introduce conditions to supervision orders.

These criticisms need to be weighed against the advantages that case law has highlighted in respect of supervision orders. The benefits that are cited include proportionality, the duty they lay upon local authorities to provide resources to 'advise, assist and befriend' the supervised child, and their capacity to promote parental self-esteem as only the parent, not the local authority, holds parental responsibility. Practitioners also reveal the same mixed views on the contribution of supervision orders. In the small-scale follow-up evaluation of the first Family Drug and Alcohol Court (FDAC) in care proceedings, some professionals reiterated earlier messages that supervision orders 'lacked teeth' and were 'ineffective' (Harwin et al [2014] 'Changing lifestyles, keeping children safe: an evaluation of the first Family Drug and Alcohol Court in care proceedings' www.nuffieldfoundation.org/evaluation-pilot-family-drug-and-alcohol-court). Uncertainties about the powers they confer were common, particularly with regard to powers to require parents to take up treatment and how to handle non-compliance.

What do we know about the pattern and scale of supervision order usage?

Without robust national information on scale and pattern, it is difficult to gauge the impact of supervision orders on courts and children's services and to plan services. Yet until very recently there has been a serious lack of robust evidence on supervision orders at the most basic level. Although the Ministry of Justice (MOJ) publishes statistical information on supervision orders,

neither the Department for Education (DfE) nor Cafcass currently publish any statistics on these orders, although Cafcass collects the data.

Our study is helping to address some of these data deficits building on the methodology we have used in the team's related programme of work (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; Harwin et al [2015] 'A national study of the usage of supervision orders and special guardianship over time (2007–2016): briefing paper no 1' www.nuffieldfoundation.org/supervision-orders) and enabling us to chart national trends on scale and pattern. As reported in the last issue of *Family Law* (Harwin et al, 'Considering the case for parity in policy and practice between adoption and special guardianship: findings from a population wide study' [2016] *Fam Law* 204), the results are intriguing. The marked rise in supervision orders attached to SGOs special guardianship orders in the last 5 years was not found when supervision orders were made as a standalone option. They comprised between 13%–14% of legal orders made when compared with care, placement, special guardianship, child arrangements/residence and order of no order. Notably, this percentage remained almost unchanged over the 5-year period.

These divergent trajectories for supervision orders with or without other orders raise as many questions as they answer but at present we lack solid evidence on possible reasons and consequences. As a result courts and children's services lack the information they need to help them decide whether or not to make a supervision order, for which children, under what circumstances and with what likely effects.

Does a supervision order promote a sustainable pathway to permanency?

The central goal of a supervision order is to 'advise, assist and befriend' the child and family. Whether the plan is reunification to birth parent[s] or to support another legal order, the aim is to increase the sustainability of the placement. Despite the body of research on reunification, the main studies (Wade et al, 'Caring for abused and neglected children: making the right decisions for reunification or long-term care' (Jessica Kingsley Publishers, 2011); Thoburn et al [2012] 'Returning children home from public care' SCIE research briefing 42, www.scie.org.uk/publications/briefings/briefing42; Farmer et al, 'Achieving successful returns from care: what makes reunification work?' (BAAF, 2011)) have focused on looked after children where supervision orders have been rather marginal to discussion (Harwin et al, 'Strengthening prospects for safe and lasting family reunification: can a Family Drug and Alcohol Court make a contribution?' [2013] *Journal of Social Welfare and Family Law* 459). The small-scale follow-up of supervision orders in the evaluation of the first FDAC in care proceedings (Harwin et al [2014] 'Changing lifestyles, keeping children safe: an evaluation of the first Family Drug and Alcohol Court in care proceedings' www.nuffieldfoundation.org/evaluation-pilot-family-drug-and-alcohol-court) found considerable variability in levels of support with poor outcomes particularly for older children. However, it was not possible to contextualise the findings of the study in the absence of national data on the use of directions, rates of supervision order breakdowns, returns to court, and outcomes for children and their parents. The lack of information is problematic because there is a risk that the troublesome findings on reunification for looked after children will simply be extrapolated to children placed on supervision orders.

It is imperative that evaluative research provides answers so that the courts and local authorities know if the making of a supervision order promotes a sustainable pathway to permanency. But at present, information specific to outcomes for children subject to supervision orders is not available because the DfE national database on family reunification is based on looked after children only, whereas, the majority of children placed on supervision orders are deemed children in need. Outcomes could be tracked via the DfE Children in Need (CiN) national database, but again information specific to supervision order children is not published routinely. As a result, it is not possible to differentiate this particular group from CiN children generally, despite the fact

that they are the only group to have been dealt with through the courts because of actual or likely significant harm.

The collection of data on child wellbeing is also far more limited. There is no requirement to monitor physical growth, emotional and behavioural development or, in older children substance misuse and convictions, unlike children who are looked after continuously for more than 12 months. The review mechanisms are also weaker than those for looked after children, as children subject to supervision orders fall outside the remit of the independent reviewing officer (IRO), reducing the opportunity to challenge the local authority (Jelicic et al [2014] 'The role of Independent Reviewing Officers (IROs) in England: final report' www.ncb.org.uk/media/1124381/ncb_the_role_of_independent_reviewing_officers_in_england_-_final2.pdf). Now that the Children and Families Act 2014 only requires courts to consider the placement arrangements in the court care plan, parents may be in a weak position if they want to challenge the level of service support or contact. More generally, information on the views of parents with children on supervision orders is very limited and the voice of children has rarely been heard, if at all.

Addressing the deficits in our knowledge and understanding

It will be clear from this exploration that there is much that we do not know regarding the use and contribution of supervision orders. But there is also some important direct and indirect evidence on what 'does work' in terms of reducing the likelihood of supervision order placement breakdown, reoccurrence of significant harm and fresh proceedings. In terms of direct evidence, the FDAC evaluation found that rates of reoccurrence of abuse or neglect one year after the care proceedings ended were significantly lower in the FDAC supervision order sample than in the comparison sample (Harwin et al [2014] 'Changing lifestyles, keeping children safe: an evaluation of the first Family Drug and Alcohol Court in care proceedings' www.nuffieldfoundation.org/evaluation-pilot-family-drug-and-alcohol-court). As there were no systematic differences in the supervision order inputs, the indications were that the inputs from the FDAC team during the proceedings and the FDAC court process were contributory factors. However this study was very modest in size and the follow-up evidence was mainly limited to one year. A further study funded by the DfE Children's Social Care Innovation programme tracking the same cases will report results later this year on the sustainability of supervision order reunifications and returns to court at three years follow-up (www.brunel.ac.uk/fdacresearch).

Evidence from reunification studies of looked after children, studies of court care plans, and international evidence on factors promoting successful engagement and sustainable outcomes point to the importance of the timing, intensity and range of service inputs (Thoburn et al, 'Returning children home from public care' (SCIE, 2012)). Further research is needed to build on insights and provide robust evidence based on far larger sample sizes.

The goals of the national study of supervision orders and special guardianship (May 2015–July 2017)

The overarching aim of this mixed methods study is to produce the first comprehensive national picture of the contribution of supervision orders to family justice, children's services and to child outcomes by assessing the extent to which they support robust sustainable family-based alternatives to public care, prevent recurrence of significant harm and return to court for fresh proceedings. The study will encompass children subject to supervision orders and their primary carers whether carers are birth parents, step-parents, kinship or non-kinship carers. Cases will be included where a supervision order is made alone or in combination with other orders (eg special guardianship and child arrangements/residence).

The study incorporates three linked elements. The first will produce a national quantitative profile of all supervision orders and applications made during the observational window (April 2007–March 2016). In addition to providing annual statistics, the study takes a longitudinal perspective that captures the movement and profile of the child within the system over time. As a result, the

children will be followed up over time to assess legal, placement, child protection and child well-being outcomes. The second element comprises intensive analysis of five local authority sites. This component will complement the national profiling exercise because the intensive sample will ensure we can provide a picture of cases which do not return to court, as well as those that do. At national level it is only possible to follow-up cases that return to court. The intensive study includes a further qualitative element. Stakeholder interviews will be held with professionals, children and primary carers. A participatory child-focused approach will be taken to ensure the meaningful inclusion of children aged from 7 years.

This is an ambitious but hugely exciting and timely study. It is time to redress the remarkable and sustained lack of interest in supervision orders, their outcomes and the experiences of children and carers. This may be partly attributable to the continuing impact of the Baby P case and the inexorable rise in care proceedings (Cafcass [2015] www.cafcass.gov.uk/leaflets-resources/organisational-material/care-and-private-law-demand-statistics/care-demand-statistics.aspx). It may also link to the fragmentation of data sources, the lighter touch monitoring systems and the unheard voices of children and primary carers. Yet these are children whose cases are so serious that they were considered under the same threshold criteria as children in care proceedings.

The article began by highlighting the potential legal and practical benefits of supervision orders. In a post *Re B-S* and *Re B* climate there is fresh interest in the informed consideration of all placement options based on a full proportionality assessment and with due regard to the goal of 'rebuilding the family and preserving personal relations'. We do not know whether these cases herald a pendulum shift towards placement with birth parents or within the extended family. Certainly the current case law trends add a further relevant context to the study, as does the continuing harsh economic environment which has seen a significant rise in children in need. Detailed study of the law and practice relating to supervision orders, and information on outcomes will help establish whether there is need to reform the legislative and regulatory framework. Many paradoxes have been identified in this article. One conclusion is clear. It is time to prioritise study of this invisible group of children and bring the topic of supervision orders out from under the radar.