

Special Guardianship Orders: The Impact on Practice

This study by Research in Practice (2015) focuses particularly on cases of Special Guardianship Orders (SGOs) granted for children on the edge of care or as a result of care proceedings and provides an in-depth analysis of professionals' views regarding the use of SGOs following the family justice reforms and recent court judgments. The research was carried out in six local authorities and through interviews with a range of professionals including Cafcass, lawyers and children's services managers and builds on current research studies in this area.

SGOs were originally intended for use with children who already had settled relationships with their primary caregivers, whether they were looked after in unrelated or kinship foster care or living with relatives or other adults outside the care system. The statutory framework does not provide for introductions, matching or for a period of settling-in, as would always be the case in adoption, reflecting the expectation that the child and special guardian know one another well.

There has been an increase in the number of SGOs being made, in part as a result of the family justice reforms, but also as a result of recent case law with more children leaving care through an SGO, up from 5 per cent in the year ending 31st March 2010 to 11 per cent in the year ending 31st March 2014 and an increase in cases arising during, or sometimes before care proceedings (Wade et al, 2014). Between 2006 and 2012 some 13,000 SGOs were made, and almost a quarter of these were made either as an alternative to or as an outcome of care proceedings.

Until recently the number of adoptions has also been increasing, however there has been a sharp decrease in the number of placement orders; from 1,650 to 750 between 1st September 2013 and 30th June 2014, mainly due to the Supreme Court and Court of Appeal judgments in 2013, which appear to have led to a perception that higher thresholds are required when seeking adoption for children (Re B and Re B-S, Bentley, 2014).

The impact of recent judgments is apparent; not only Re B, Re B-S and Re R, but also the more recent judgment in Re A. with some feeling that the court is making reactive decisions because they are worried about cases being taken to the Court of Appeal. The effects are also being felt in terms of the increase in the number of applications to revoke placement orders and courts asking LA's to reconsider their recommendation for care and placement orders in favour of SGOs. There is a tension between the view of the court and social workers with regard to the degree to which carers can offer long-term care for the child and what constitutes 'good enough' parenting. This may lead to the court disagreeing with LAs' recommendations for a placement order when there is a negative assessment of the prospective special guardian. This has led to SGOs sometimes being granted to carers who are not members of the extended family and who have no existing relationship with the child. Many professionals feel that SGOs should not be used for babies and very young children and are concerned that more 'fragile' SGOs are being sanctioned by the court. Some courts are now starting to take a more balanced view towards adoption following Re R, but decision-making can be driven by local court contexts.

In the meantime LA's are facing a number of challenges in relation to SGOs, including difficulties in identifying family members early enough; concerns around the assessment of and support provided for special guardians; SGOs being used for younger children than previously and SGOs being used when there is no existing bond or relationship between the child and carer. The most contentious cases are when the LA is not supportive of an SGO being made. Local authorities already have experience in adoption and more control over aspects such as matching and support; but SGOs do not have the formal boundaries that go with adoption and require different skill sets for practice in a complex, extended family context. As a result LA's are beginning to adapt their practice in identifying, assessing and supporting special guardians.

Issues and Challenges around SGOs:

Identifying and assessing extended family members:

Family members often come forward as potential special guardians during proceedings, once the court has decided that the child cannot remain with their parents and many courts do not have a cut-off point for this even though the guidance stresses that all kinship/connected persons assessments must be filed by the Case Management Hearing by week 20. Closer joint working and training between CAFcASS, the LA and the Local Family Justice Board are proving helpful, as are joint assessments with the Cafcass guardian and the social worker. The LFJB has a key role to play in exploring and helping to resolve any tensions to meet the best interests of the child in both the short and longer term and could help to develop joint protocols regarding the final point at which family members can come forward as prospective carers during care proceedings.

Social workers are trying to be pro-active in the early identification of extended family members, some are convening family group conferences before the formal pre-proceedings stage or holding family meetings which are led by social workers and focus on risks, rather than being led by family members. Regular liaison with the FGC coordinator and following up with relatives keeps all options open and allows for sharing information and explanation of the difference between adoption, SGO, and foster care. There is a sense that the threshold for consideration of potential carers has been downgraded, without the checks and balances of a more rigorous adoption assessment and there is a lack of guidance regarding the assessment of special guardians with no tried and tested models of practice. The assessment for those without an existing relationship is often more uncertain and complex; options may include a connected person's fostering arrangement for a period of time before an application for an SGO is made or an SGOs being made with a supervision order.

One of the main challenges for social workers is the number of assessments they need to complete within the 26 week timescales with insufficient time for in-depth coverage, reflection and analysis, especially when family members come forward late in proceedings, or live far away. LAs are adapting their practice in identifying, assessing and supporting special guardians. Examples include providing leaflets; explaining the different types of orders; using a single assessment to assess special guardians; social workers and guardians working together to do assessments during proceedings; using the LFJB as a forum for raising issues and holding joint training sessions and seminars. Some LA's finance potential carers from abroad to travel to the local area, undertake the assessment and have contact with the child.

Many LA's use Signs of Safety as part of their assessments, often supplemented by adult attachment interviews, genograms, exploring resilience and protective factors and knowledge of child development.

Key aspects of the assessment should include:

- The quality of the relationship between the child and the carer;
- The needs of the child and parenting capacity to meet those needs;

- Ability and motivation to commit to care for the child throughout their minority;
- Ability and motivation to safeguard the child and to withstand any pressures put upon them by the parents;
- Understanding and accepting any risk posed by parents, managing and working with LA to reduce risk.

Contact:

One of the main challenges is around contact with the child's birth parents and the relationship between the child, the guardian and the child's birth parents is a frequent difficulty. Wade et al (2014) found that the children in their study had a high level of regular contact with a range of relatives and although this can be positive it can also be challenging for both children and their guardians. There are also heightened tensions for special guardians where family relationships are not amicable and for grandparents with divided loyalties. Again, there is lack of clarity in the guidance which is open to interpretation in some areas and courts and practitioners are not responding in a standardised way. The lack of LA support for complex contact arrangements has been identified a contributory factor to placement breakdown.

Support:

Special guardians differ in the help they want or need; however support during and after placement is usually essential with children often emerging from longstanding and complex family difficulties. It may include financial and practical support, help with education and housing issues, support around relationships with birth parents and contact, therapeutic and life story work. The court should be provided with a detailed support plan as part of the court bundle, generally drawn up by the social worker who does the special guardian assessment and agreed in advance with guardians and their representatives. There should also be co-operation between LA's in providing support when special guardians do not live in the LA from which the SGO was made.

Although the nature of SGO's means that it is hard to run dedicated preparation classes potential guardians could attend kinship and foster carer preparation groups. It is also important to leave the door open for the future, some LA's offer workshops and training opportunities, special guardian support groups or keep in touch via newsletters or personal contact.

Successful outcomes for the child:

The strength of the bond between the child and their carer and whether or not the child had lived with the guardian before the SGO was made are both independently associated with later placement stability; in contrast making SGOs quickly, before relationships have been properly tested carries some future risk, SGO's work best when there is an existing long term relationship between the child and the carer, and the carer:

- Understands the child's needs and is a good match;
- Is committed to caring for the child throughout their minority and understands that they are not just looking after the child until the parents get better;
- Is aware that their primary responsibility is the safeguarding and welfare of the child;
- Is able to manage complex contact arrangements;
- Has a good support network.

References

Research in Practice: *Impact of the Family Justice Reforms on Front-line Practice Phase Two: Special Guardianship Orders Research report*; August 2015, DE

Re A (A Child) A [2015] EWFC 11

Re B (A Child) [2013] UKSC 33

Re B-S (Children) [2013] EWCA Civ 1146

Re R (A Child) [2014] EWCA Civ 1625

Wade et al, 2014: *Investigating Special Guardianship: experiences, challenges and outcomes* DE

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