
IMPLEMENTING SPECIAL GUARDIANSHIP

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Background

Increasing the scale and range of permanent placements for children unable to live with their birth parents has been a policy priority of Government from the late 1990s. Since the introduction of the Children Act 1989, the main options for permanence with relatives, family friends or strangers have included residence orders, adoption or long-term fostering. The Adoption and Children Act 2002 introduced, from December 2005, a further permanence option for children in the form of special guardianship.

A special guardianship order provides legal permanence for those children for whom adoption is not appropriate, and gives a special guardian clear responsibility for all aspects of caring for the child and for taking decisions to do with his or her upbringing. Although the order does not legally sever the child's relationship with his or her birth parent(s), the special guardian may exercise parental responsibility to the exclusion of all others with parental responsibility (apart from another special guardian). Children formerly looked after cease to be so and local authorities cease to have direct powers of intervention, other than those arising from their broader safeguarding duties. Local authorities do, however, have a duty to make provision for a range of services to support people affected by special guardianship. While the order cannot be challenged without leave of the court, there are no restrictions on parents or other relatives applying for contact, prohibited-steps or specific-issues orders, unless their right to do so is restricted by the court. In these respects, those obtaining special guardianship orders have a more limited legal relationship with the child and less protection against further litigation than do those who adopt.

Study design

From a research perspective, very little is known about how special guardianship is working out in practice. This research, commissioned as part of a wider study of permanent placements for children, had three principal aims:

1. To describe how eight local authorities were implementing special guardianship, to account for variations in approach and to identify issues of policy, procedure and resources that have arisen in the first two years since special guardianship was introduced.
2. To explore how the Special Guardianship provisions were being used through analysis of the characteristics, circumstances and motivations of carers and children.
3. To describe the experiences of those seeking special guardianship, including aspects of their experience, progress and support both before and after the granting of an order.

The research design comprised three key elements:

1. A policy study based on document analysis and key informant interviews with 38 managers in eight local authorities and with 10 informants from national child welfare and legal agencies.
2. A survey of special guardianship applicants and their social workers in the eight areas, comprising information on 81 carers caring for 120 children.
3. Case study interviews with 15 special guardians and, where feasible, their children (3).

An advantage of combining this research with the wider study of adoptive and long-term foster placements is that it provided an opportunity to make some initial comparisons between children entering special guardianship households with children in other forms of long-term permanent placement.

Implementation

There is a high degree of goodwill towards special guardianship amongst child welfare professionals. Most recognise the need for a legal order of this kind and feel that it can provide a sufficient degree of permanence for those who want this. Overwhelmingly, carers in the study also welcomed it. Despite continuing concerns about financial security and the availability of services, most felt it was broadly meeting their expectations and had been the right decision for them and the children concerned.

The degree to which these local authorities had risen to the challenges of implementing special guardianship was highly variable. Some had prepared well in advance, others had been more reluctant to invest time and resources. A key factor that influenced change was the presence (or otherwise) of a strong sense of corporate leadership and of lead officers to 'champion' change. Other factors included area demographics, the pressure from other competing priorities, the time needed to scope demand for services and changes required to prevailing staff cultures and practices.

Differences were also evident in the structure and organisation of teams. Each council had different arrangements for responding to applications. Only in one area did a single team handle all referrals through to the final court hearing. In other areas, arrangements depended on the type of case and often involved a

patchwork of teams handling different aspects of the process. A similar diversity existed in the organisation of post-order services. Where a dedicated social work team was involved at all stages (before and after the hearing), pathways for carers seemed clearer, expertise was more readily accumulated and services tended to be more coherent and comprehensive. As with adoption and kinship care, therefore, there is a case for specialisation where numbers warrant it.

Take-up - who is applying and why?

Most take-up in the first two years had been from relatives (86 per cent), with grandparents in the majority. The children concerned were relatively young, with 52 per cent aged five or under. Most (74 per cent) had been living with their carer before application, often for a lengthy period.

Over two-thirds (70 per cent) had been looked after immediately before application, just under half (48 per cent) in kinship foster care and the remainder in unrelated foster care. Smaller proportions had been living with relatives on residence orders (16%) or without a legal order (14%). Most children had come from troubled family backgrounds marked by maltreatment and parental difficulties (mental health and/or substance misuse problems and, to a lesser degree, domestic violence).

Special guardianship is therefore being used with a broad range of children. Most cases have occurred in the public law arena, either as an exit strategy from care or as an alternative to care and possibly, for the youngest children, adoption. Although carers were strongly motivated by a desire to provide a stable and permanent home, to have greater parental control and legal security, a desire to keep children within the family network or return them to it from care figured with equal prominence.

All things being equal, keeping children within the family network is likely to be beneficial. However, the profile of carers and children raise important questions about the durability of placements, as carers and children age, the reduced opportunities for permanence should placements break down at a later stage and the resource implications of providing longer-term services to meet enduring needs.

Take-up from unrelated foster carers had been low (13 per cent) due largely to concerns about financial uncertainty, the potential loss of social work support for them and/or their child and the potential difficulties of managing birth family

relationships. In response, some areas were beginning to offer guaranteed financial and support packages for the duration of placement, rather than just for two years as specified in guidance.

While there were encouraging signs of take-up within some minority ethnic communities, there was little evidence that unaccompanied asylum-seeking children had yet been considered.

Pathways to special guardianship

The appropriateness of a family placement will depend on the quality of assessment undertaken and the safeguards that exist to quality assure these decisions. In these respects, the findings were mixed. Carers placed high priority on the provision of reliable advice, information and guidance. This was frequently in short supply, in part due to the newness of the legislation. Where social workers lacked information, heavy reliance was placed on solicitors and the courts.

There was widespread concern amongst practitioners about the relatively short timescales for completing assessments and court reports (commonly 12 weeks or less). Especially where children had not previously lived with these relatives or where children were living with relatives without legal protection, it was perceived to leave insufficient time for in-depth coverage, reflection, analysis and for preparation of carers. In these circumstances, some practitioners questioned whether there should be provision for 'trial' placements or 'pre-assessment' plans for the child in line with those in adoption.

Most carers in this study, however, had been subject to previous fostering assessments and it is important that practitioners are also mindful that special guardianship assessments can build on these earlier assessments in an efficient and timely way.

Quality assurance mechanisms were variable. In two areas, public law cases were brought to permanence panels for recommendation. In other areas, cases were signed off by senior officers. However, it was not always clear how 'private' applications were quality assured, if at all. Given the powerful nature of the order, there is a case for further guidance to clarify and strengthen safeguarding and quality assurance procedures in special guardianship cases.

The survey findings offered encouragement. Most carers felt that the key assessment areas

had been covered in sufficient depth. Indeed, some were frustrated by delays in the process, its overly intrusive nature and the duplication of information collected by different professionals. Getting the assessment balance right is a major challenge for local authorities when approving family carers. On the one hand, there is a clear need for a robust and comprehensive assessment process to safeguard children. On the other, assessment needs to have a flexible and inclusive format that engages family carers, many of whom will not have freely chosen to resume a caring role.

Once the court decision had been made, the response of special guardians was overwhelmingly positive, although a minority had experienced some pressure from social workers or the courts to accept special guardianship. Other court orders were quite commonly attached, including contact orders (26 per cent of cases) or supervision orders (11 per cent). The latter had been attached to secure local authority services or arose from court concerns about how carers would initially manage.

Experiences

Most children (65 per cent) had been living with their carers for two years or more at the point of data collection. Most carers (76 per cent) and social workers (83 per cent) thought that the placements had gone 'very well'. There were few social work concerns about the safety of children at this stage. Most children were reported to be faring well, especially in relation to their health, attachments and emotional well-being. Overall, well-being was lower for older children and, in some respects, for children with learning disabilities and for those living with unrelated carers who had previously fostered them. Concerns about children's emotional and behavioural difficulties were quite common.

From the carers' perspective, special guardianship was broadly meeting their expectations. They felt it was providing them with sufficient parental responsibility and legal security while enabling children to retain a link with their birth parents. Special guardianship, however, had a considerable material and psychological impact on some carers and their families. Life plans, especially those of grandparents, had to be adjusted, some had given up employment and most had sacrificed important aspects of their social lives. Although, for some, contact with birth parents was relatively unproblematic, for many others the management of birth family relationships was a stressful challenge. Although

carers relied heavily (and often preferred to rely) on informal support from family and friends, fault-lines sometimes occurred within families that reduced these sources of help.

Support and services

Given these experiences, many special guardians and children will need some continuing professional support. Most carers (80 per cent) had received an assessment of their needs, although depth of coverage was variable, and assessments had generally taken place in advance of the court hearing.

Local council differences in implementing Special Guardianship had implications for the nature and range of services that were provided, to whom they were provided and for how long. Areas that had established greater early momentum and, in response to rising demand, invested in more specialised teams were more likely to have developed a coherent range of services. Arrangements in areas that had experienced delayed development tended to be more inconsistent. In areas with higher numbers of applicants, there was also evidence of resource strain on post-order support teams, especially in relation to the high level of family contact in these cases.

At the point of data collection, most social workers (61 per cent) were no longer in touch with special guardianship families. In some instances case closure had occurred shortly after the court hearing. For some special guardians, early case closure was not unwelcome. Not all carers wanted or expected continuing support and the value of self-reliance was a consistent theme in the survey and interviews. For other carers, however, case closure had been experienced as unduly abrupt and their need for continuing support was not addressed.

The survey pointed to some priority areas for special guardians. Apart from advice, information and financial assistance, it highlighted the value of support to help special guardians manage often complex and conflicted family relationships, therapeutic input linked to maltreatment and the behavioural needs of children and for support groups, training and social activities. One-third of children (34 per cent) had received some therapeutic input, mainly from CAMHS, and well over half (61 per cent) of carers had received some help with birth family contact. The training needs of special guardians were less likely to have been

adequately considered during assessment and very little use had been made of respite services provided by local authorities (six per cent).

Specialist teams tended to have a wider range of informal strategies for staying in touch with carers, including informal support groups, newsletters and social events. These provided easier routes back into services when needed. Informality and flexibility is important, since family carers were sometimes reluctant to seek help due to fears of being perceived as not coping, and simply providing a signpost to a duty service, as was often the case, is therefore likely to be insufficient.

Arrangements for providing financial assistance varied considerably across the local authorities – and within them with respect to different kinds of applicants. In general, entitlements for former foster carers (unrelated and kinship) tended to be greater. For these carers, allowances were more likely to be protected for at least two years and, in some cases, for the duration of placement. Entitlements, if they existed at all, were much more varied for carers of children not previously looked after or not previously known to children's services. Decisions about payments were also not consistent across authorities. In some areas they were linked to fostering rates and in others to adoption or residence allowances, which tended to be lower. The special guardianship guidance suggests local authorities should have regard to fostering allowances when calculating those for special guardianship and this guidance has been reinforced subsequently by case law.¹

However, most special guardians were in receipt of a regular allowance (90 per cent), one-half (50 per cent) had received assistance with legal fees and smaller proportions had received other forms of financial assistance. Once account was taken of means tests and other important fringe allowances paid to foster carers, many received less money than they did as foster carers. A relatively small number of kinship carers reported experiencing financial hardship. In some cases satisfactory financial settlements were only reached after the protracted intervention of solicitors or the courts.

¹ See: Department for Education and Skills, (2005), *Special Guardianship Guidance: Children Act 1989: The Special Guardianship Regulations 2005*, paras 65-66. The relevant appeal court judgement is: *B v London Borough of Lewisham* [2008] EWHC 738 (Admin).

Overall, therefore, post-order financial and support services were inconsistent both within and between local authorities and many practitioners identified a need for further guidance to help clarify local council responsibilities in this area.

Comparing special guardianship children to those who are adopted or in long-term fostering

Initial comparisons with children in the companion permanent placements study reveal both similarities and differences.² Differences in the way these samples were drawn make these comparisons at best tentative. One inevitable consequence of this was that the special guardianship children were younger and had been living with their carers for a shorter time - since the children followed up in the companion study had all entered foster care seven or more years previously.

However, the average age at which these children moved to live with their special guardians (2.7 years) was very similar to that for children adopted (2.9 years) but they were on average younger than the long-term fostered children were when entering their current foster placement (4.1 years). Special guardianship children were less likely to be disabled than were those in foster care or adopted by carers, although the proportion (18 per cent) was very similar to that for children adopted by strangers (16 per cent). They were also less likely to have moderate to severe emotional and behavioural difficulties than children in all other groups, although this may have been a feature of their younger age. In relation to reasons for placement, the background circumstances of children across all forms of permanence showed signs of similarity with respect to maltreatment and parental difficulties.

In overall terms, therefore, children entering all forms of permanence appear to have a good amount in common with respect to past family experiences and the ongoing challenges that children are likely to present to carers. These appear to be essentially similar children taking different pathways to permanence. It is therefore likely that their support needs will also be

² Biehal, N., Ellison, S, Baker, C. and Sinclair, I. Characteristics, outcomes and meanings of three types of permanent placements: adoption by strangers, adoption by carers and long-term foster care
[http://www.dcsf.gov.uk/research/data/uploadfiles/DCSF-RBX-09-11\(R\).pdf](http://www.dcsf.gov.uk/research/data/uploadfiles/DCSF-RBX-09-11(R).pdf)

broadly similar, although the current availability of special guardianship services is inconsistent. While special guardianship will undoubtedly offer a valuable permanence option for some children, it is much more likely to work successfully if it is adequately resourced and carers are supported to deliver the care that children need.

Further information

A full report of this study will be published by the British Association for Adoption and Fostering in 2010.

Further information about this research can be obtained from Isabella Craig, Analysis and Research Division, 4FL-ARD, DCSF, Sanctuary Buildings, Great Smith Street, London, SW1P 3BT.

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