



Department
for Education

Special guardianship review: report on findings

Government consultation response

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Contents

Ministerial Foreword	3
Introduction	4
Children awarded an SGO	4
What the review has found	5
Next steps	7
The assessment process	7
Summary of responses received	8
Main findings from the Call for Evidence	8
Question analysis	9
Question 1	9
Question 2	10
Question 3	11
Question 4	13
Question 5	14
Question 6	16
Annex A: List of organisations that responded to the consultation	17
Local authorities (67)	17
Organisations (30)	19
Annex B – Summary of research	21
Background	21
Research evidence from the Special Guardianship Review	22
The Nuffield Foundation quantitative analysis of SGOs and SGOs awarded with Supervision Orders http://www.nuffieldfoundation.org/supervision-orders	28
Annex C – Acknowledgements	30
Annex D – Bibliography	32

Ministerial Foreword



As Minister for Children and Families, I am pleased to publish this report on the review of special guardianship.

Since the inception of special guardianship orders (SGOs) in 2005, we have seen their use increase year on year, providing loving, permanent homes for children. This has been a positive development and one that I welcome. I pay tribute to the many families who act as special guardians to provide children with a safe and stable environment where they can thrive within their community.

Ten years on from the 2005 legislation, however, changes in the use of SGOs have led professionals to be concerned that some special guardians may not always be assessed or supported in a way that puts children's long term welfare first. For this reason, I initiated the review.

The results of the review reflect extensive discussion with a wide range of interested parties, including sector experts, children and special guardians. The evidence provides a clear rationale for creating a stronger, more robust assessment framework for potential special guardians. I want this to be implemented quickly and this document gives details of the regulatory changes we intend to make.

There are other actions we will need to take to improve the legislative framework and bring greater consistency to local practice, for example to improve the support to special guardians and children. I therefore intend to publish further proposals for strengthening special guardianship in the New Year.

EDWARD TIMPSON MP

Minister for Children and Families

Introduction

Ten years on from the introduction of Special Guardianship Orders (SGOs), the Government has undertaken a review to consider whether the use of SGOs is improving children's lives and their chances of good outcomes in life.

The aim of the review is to protect and enhance special guardianships where they provide the right permanent solution for children and young people, and to identify and remove problems and poor practice in the system.

Children awarded an SGO

We need to ensure that children living under an SGO are safe, and that the placement gives them the best chance of good outcomes in their life.

To be confident of this, we need to make sure that in every case:

- There is a robust assessment of the potential special guardian (or guardians) and their capacity to care for the child and meet his or her needs;
- Decision making by local authorities, Cafcass and the courts is robust, consistent, and based on sound evidence about the child, potential carers, and the options available, including the benefits and risks of different placement options;
- The placement has a strong probability of lasting permanently until the child is 18; and
- Children and carers living in special guardianship arrangements have the support they need to do well and for the placement to last permanently.

Children will live under SGOs in different circumstances. Some are children who have lived for a long time with foster carers, for whom an SGO does not represent a change in living arrangements but gives their carers greater parental responsibility. Others are children who are unable to live with their parents and there is an existing agreement that they will live with a different family member or friend. In such cases an SGO tends to formalise that arrangement and gives their carers an appropriate degree of parental responsibility. Others will be children who are in care proceedings, or who are known to social workers and are on the edge of care. There will be either an agreement or a court finding that the child cannot live with their parents, and a question about whether it is best for the child to be cared for by a family member or friend, by foster carers, or adopted.

In all cases, SGOs are a final, permanent legal order. Once made, they are expected to last until the child is 18. The local authority has no parental responsibility for the child once an SGO is made.

This is why it is critical that all involved in the system make sure special guardianship orders secure a good, caring, permanent home for children.

What the review has found

The review has comprised:

- A Call for Evidence, in which practitioners and members of the public have been invited to have their say on how special guardianship works, including consultation events with special guardians hosted by Grandparents Plus and the North London Adoption and Fostering Consortium;
- Analyses of Cafcass and local authority case files (51 each) where an SGO has been awarded; and
- Statistical analysis by The Nuffield Foundation of data trends in the use of SGOs and the use of SGOs with supervision orders (SOs).

The review has also drawn upon statistical analysis by the Department for Education, and research previously published on special guardianship, most notably 'Investigating Special Guardianship: Experiences, Challenges and Outcomes' by Jim Wade, Ian Sinclair, Lucy Stuttard, John Simmonds (November 2014)¹

In summary, the review has found that:

- The majority of SGOs are made to carers who have an existing relationship with the child and who, with some appropriate support, intend to and will be able to care for the child until 18;
- There is a significant minority of cases where the protective factors we expect to see in each case - described above - are not in place. In particular, the following issues have been found:
 - Rushed or poor quality assessments of prospective special guardians, for example, where family members come forward late in care proceedings; where there has been inadequate consideration early on of who might be assessed; when assessments have been carried out very quickly to meet court timelines; or when the quality of an initial assessment is challenged, requiring the reassessment of a special guardian.
 - Potentially risky placements being made, for example, where the SGO is awarded with a supervision order (SO) because there remains some doubt about the special guardian's ability to care for the child long-term. In the Research in Practice case file analysis, almost half of the 51 cases considered had a SO attached to the SGO. This is particularly concerning where the child is not already living with the guardian, or where there is no or little pre-existing

¹ <https://www.gov.uk/search?q=special+guardianship>

relationship. 70% of respondents to the Call for Evidence said that the assessment process for determining whether a prospective special guardian is suitable could be improved.

- Inadequate support for special guardians, both before placements are finalised, and when needs emerge during the placement, for example, where the special guardian has not received the information or advice to make an informed choice about becoming a special guardian, or where they receive little or inadequate support post order to ensure they can support the child's needs. 72% of respondents to the Call for Evidence said that advice and support should be provided to children, special guardians and birth parents before, during and after the award of special guardianship.

The review indicates that the challenges identified with SGOs occur at different points in the care process, but an assessment that lacks quality at the start is a major contributor to the issues highlighted above. It is vitally important for the local authority analysis to be robust, supported by strong and intelligent evaluation. SGOs are permanence orders, awarded on the expectation that the child will remain in that placement until he or she is an adult. For this reason, a sound prediction of the child's long-term welfare in that placement should sit at the heart of the assessment, and form the basis for the final care plan.

The responses to the Call for Evidence are set out in summary below, and the research is summarised in detail in Annex B.

Next steps

As set out above, we need to ensure that children living under an SGO are safe, and that the placement gives them the best chance of good outcomes in their life. To be confident of this, children deserve to be assured that there is a robust assessment, that decision making is evidence-based, that the placement is assessed as being likely to last until 18, and that appropriate support will be available. The issues identified by the review suggest that these principles are not consistently followed.

Given this, we intend to:

- Strengthen the assessment process, to ensure that assessments are more robust and more consistent for all children, and that they are based on the fundamental principle that the person being assessed is capable of caring for the child for the whole of that child's life to adulthood;
- Actively consider whether further changes are required to the legal framework that underpins decision making around special guardianship; and
- Consider what support should be available to children living under special guardianship arrangements.

The assessment process

Immediately, the Government will amend regulations and statutory guidance to require that the local authority report to the court on potential special guardians includes:

- the capacity of the guardian to care for the child now
 - and until the child is 18
- the prospective special guardian's understanding of the child's current needs and likely future needs, particularly in light of any abuse or neglect the child has previously suffered, and their ability to meet those needs
- the prospective special guardian's understanding of any current or future risk posed by the child's birth parents and their ability to manage this risk
- an assessment of the strength of the previous and current relationship between the child and the prospective guardian

We will issue more proposals in the New Year, following further deliberations on findings from the review and after discussions with other government departments, local government representatives and voluntary sector representatives.

Summary of responses received

On 16 July 2015, the government launched a Call for Evidence and this closed on 18 September. We asked for views on four themes:

- Whether there are any changes needed to the legal and/or practice framework in which special guardianship decisions are made, or whether the current framework works well;
- How well assessment for special guardians works at the moment, and whether this could be improved;
- What advice and support is most important at each stage of becoming a special guardian; and
- Your views on what the best practice in special guardianship looks like so that we can support all practitioners to deliver this.

We received 154 responses: 67 from local authorities, 30 from other organisations and 57 from individuals which included 20 from special guardians.

Main findings from the Call for Evidence

- 71% of respondents said that the legislation, regulations and or statutory guidance relating to special guardianship needed to be changed.
- 35% of respondents said that practitioners were not clear and consistent about the factors to take into account when considering whether an SGO is the most appropriate order for which to apply; 16% said that they were; 55 did not specify but provided comments on changes that could be made.
- 71% of respondents said that the assessment process for determining whether a prospective special guardian is suitable could be improved.
- 76% of respondents said that advice and support should be provided to children, special guardians, and birth parents before, during and after the award of special guardianship. The main issues cited were the need for independent legal advice, support information, access to therapeutic support and ongoing support if needed, and financial help. Managing contact with birth parents was also raised as a major issue.

Question analysis

Question 1

Does legislation, regulation and or statutory guidance relating to special guardianship need to be changed?

	Total	Percent
Yes	110	71%
No	10	6%
Maybe	14	9%
Question not answered	20	13%

Of those respondents who said yes, most said that changes were needed to ensure the consistency of practice across the country, particularly around how assessment is conducted and how support needs are identified. Many respondents cited particular issues which they felt should be covered in revised statutory guidance. These included: that the issues included in the report to the courts about an individual's suitability to be a special guardian should be specified; the importance of Life Story Work for a child placed on special guardianship; and that the type of support provided for special guardians should be specified. 11 respondents stated that the threshold for special guardianship should be made clear, as there is some perception currently that it is lower than for other permanence options.

There was particular agreement across all categories of respondent (nearly all of the special guardians who responded cited this) that local authority support for special guardians should be consistent across the country.

32 respondents said that the legislation was broadly appropriate but should be adapted to take account of the changing use of SGOs and in particular to take account of the fact that SGOs were now being used for younger children and that placements were being made where there was no pre-existing relationship.

Several respondents stressed the importance of early work with families to reduce the number of individuals being identified late on in proceedings. Five respondents said that Family Group Conferences (FGCs) should be mandated or at least recommended as good practice. Some local authorities said they were already using FGCs but several respondents said that there was inconsistency in practice in how they were used.

Several respondents said that the legislation should be amended to set a time limit beyond which the courts should not permit an individual to come forward to be assessed

as a special guardian; none of these respondents suggested what this should be. Several respondents said that legislation should be amended to ensure that independent legal advice is available for prospective special guardians.

Of those who said no changes to legislation or guidance were needed the local authorities said that they used permanence teams to conduct assessments which they said had helped to ensure the consistency and quality of their assessments. One special guardian said that their experience of the assessment process had been “good”.

Several respondents noted that some special guardianships are awarded through private applications - some said that this was sometimes the consequence of local authority pressure on family members to take on special guardianship to avoid court proceedings. These respondents thought that more recognition was needed on this issue to ensure that assessment and support was adequate for these special guardianships.

Question 2

In your experience, are practitioners clear and consistent about the factors to take into account when considering whether an SGO is the most appropriate order for which to apply?

	Total	Percent
Yes	25	16%
No	54	35%
Neither yes or no answered but views expressed suggesting improvements	55	36%
Question not answered	20	13%

Two thirds of those who responded felt that practitioners were not clear and consistent: this view was reflected across all categories of respondent. Several respondents said that guidance should specify what should be included in assessments. Support was also cited as an issue where practitioners or local authorities were inconsistent in their approach. Nearly all of the special guardians who responded (9) said that local authorities should provide clear information about what support special guardians could expect to receive. 7 respondents said that standard assessment templates could help to ensure consistency. One respondent said that ‘the lack of national standards in regulations and statutory guidance for local authorities means there is confusion about when special guardianship orders should be used’.

Several respondents said that either they or their members had reported that local authorities had put pressure on them to become a special guardian.

Some local authorities said that assessments were often undertaken by the allocated children’s social worker ‘who may not be well equipped to undertake this task on top of delivering social work to the child and birth parents’.

Of respondents who said that practitioners were clear about the factors to take into account (20% of local authority respondents said that this), this was believed to be the result of: local efforts to develop combined training for social workers and legal teams to develop a consistent approach; the use of permanence teams to assess suitability; and the use of standardised templates.

Question 3

Could the assessment process for determining whether a prospective special guardian is suitable be improved?

	Total	Percent
Yes	110	71%
No	10	6%
Neither yes or no answered	34	22%

Two thirds of respondents said that the assessment process could be improved. This was across all categories of respondent. Of those that said no change was needed, respondents either provided no commentary or said (by local authorities) they had processes in place to enable robust assessments.

Of those that said that change was needed the main issue cited (50 respondents said this) was that the introduction of the Public Law Outline (PLO) had led to assessments of suitability for special guardianship being rushed as courts wanted to meet the 26 week PLO deadline. These respondents felt that more flexibility was needed to enable sufficient time for robust assessments to be made. Two local authorities cited examples of cases where assessments had been requested by the courts to be completed in three weeks; several other local authorities cited examples of assessments being conducted in four weeks. A contributory factor cited by respondents as causing pressure on the timescales was family members coming forward late in the process, but where no extension was granted by the court to enable a longer period of time for the assessment.

Several respondents referred to the use of viability assessments. While these were viewed as potentially helpful, half of these respondents said that current practice was inconsistent and that assessments were poor quality. An independent social worker said ‘viability assessments can set the scene and direction of the case and here arguably more quality is required’.

24 respondents were concerned that there had been an increase in the number of SGOs granted with supervision orders (SOs) which they said indicated that the courts and/or local authorities had concerns about the SG being made. Two special guardians thought that this was a positive development because it 'kept the local authority involved' and helped ensure that the local authority provided continuing support; a third of respondents cited ongoing support as a good reason for awarding SO, but 16 respondents said that SOs indicated ongoing concern about the SGO being granted and questioned whether the placement was correct. One local authority said that the award of an SGO with an SO was 'oxymoronic' because SGOs are intended to be a permanence option but the use of SOs suggested lack of permanence.

Ten respondents suggested that a different assessment process should be put in place in cases where there was no existing relationship between the child and special guardian. However, most respondents said that what was most important was to undertake a robust assessment which recognised the circumstances of the case. For example, one respondent said 'the overriding concern is that assessments need to be robust with workers given sufficient time to complete the more complex aspects of assessment'.

Several respondents said that the current report for the courts was repetitive and did not encourage a sufficient level of analysis to determine an individual's suitability. Eighteen respondents said that the report for the courts should include an analysis of the potential special guardian's ability to care for the child until he or she reached age 18. Several said that the report should also include an assessment of the prospective special guardian's ability to help the child overcome emotional damage.

Fifty six respondents said that the process for special guardianship should be more aligned to that for other permanence options or that standard' templates should be used.

Thirty three respondents said that the arrangements should allow for a 'settling in' period for the child, to test out the strength of the attachment. This was seen as particularly important where there was no pre-existing relationship between the child and the special guardian. One respondent (a member of the judiciary) said that 'SGOs were introduced to cement an established relationship.....they were not intended to be used as a means of creating relationships where there was little, if any relationship'.

Question 4

What type of advice should be provided to children, special guardians, and birth parents do you think should be provided and when? Before an SGO is made / During a child's transition to a new SGO placement / after / at all stages

	Total	Percent
At all stages	116	76%
Before an SGO is made	25	16%
During the transition to a new SGO placement	4	1%
After an SGO is made	9	7%

Over two thirds (116) of all respondents said that support should be provided at all stages.

There was substantial agreement from all categories of respondent about the need for special guardians to receive clear advice and information about special guardianship orders before becoming a special guardian so that they were absolutely clear about what they were taking on.

Of those who specified 'before' the issues cited as particularly important were: the need for independent legal advice for prospective special guardians and clear information about what the role of a special guardian involved. (One local authority said that 'becoming a special guardian was probably the last thing on an individual's mind two weeks before the social worker knocked on their door'.) Of those who specified 'after' (this included 5 special guardians) the main issues cited were for support for managing contact arrangements with the birth family; ongoing support, and financial help.

The issues cited above were considered to be as equally important by those respondents who said that support was needed at all stages. Seventy respondents said that it was essential that prospective special guardians had enough information to decide whether they wanted to become a special guardian; half of the special guardians who responded said this. Several respondents said that they had been put under pressure by their local authority to become a special guardian; some of these said that this was because they believed the authorities regarded special guardianship as a 'cheap option'. Several individual respondents said that they were not provided with information about what support they would receive and some said that they had been promised support by their local authority but that this had not been forthcoming.

Other issues highlighted included: support to manage contact issues; financial support; help with attachment issues; therapeutic support; special guardians to have the same training as foster carers, for example, to cover issues such as parenting and attachment.

Many respondents referred to the importance of ongoing support from local authorities to help ensure the success of placement. Several respondents said that special guardians should be able to access the Adoption Support Fund with some saying that children on SGOs 'had the same needs as adopted children and should be able to access the same support.' Two special guardians said that they felt 'cast adrift' once the order had been made. Three special guardians said that their child's support needs did not become apparent until after the placement and that it had then been difficult to access support; one special guardian said that there was 'no one to turn to'. 11 respondents referred to feeling pressurised into applying for an SGO, and one organisation reported that foster carers had been told that they should apply to become special guardians if they wanted to ensure that the child(ren) remained with them long-term. Several respondents said that local authorities should provide a named contact for special guardians to make it easier to get information or help further down the line.

Several local authorities said that a support package should be set out as part of the assessment process, and gave examples of their practice. Several respondents said that local authorities should facilitate peer support groups or other forms of ongoing support for special guardians. This was an issue highlighted at engagement events with special guardians at which they said that this type of support had been of significant help to them; one special guardian said that after she had moved home she had travel 60 miles so that she could access support at her original local authority; this included access to a peer support group.

Question 5

What constitutes good practice?

About two thirds of respondents provided comments under this question. The issues raised covered many of those raised in previous questions, but focused on the assessment of and support for special guardians. These included:

Assessment

- The use of dedicated special guardianship teams or workers or permanence teams to help ensure consistency and robustness of assessments.
- The use of combined training on special guardianship or permanence, for social workers and legal teams.
- One local authority said that it has set up a panel for special guardianship orders which considers all potential cases at a very early stage first with a viability assessment and then throughout the process. This allows for consistency of approach, financial management and quality control. It also runs support groups and ongoing training in line with that offered to foster carers.

- Effective work with key partners e.g. regular and productive liaison with the judiciary to review practice (for example, where there is conflict of interest between court timescales and production of assessments)

Support

- Giving time and space to individuals to decide whether to apply for an SGO, including full information for special guardians - an honest assessment of the children, medical and psychologist reports and explanations to the special guardian in clear language.
- One local authority said that the placing local authority should inform the authority where the special guardian lives. The host and placing authorities should have joint planning meetings to discuss cases and to help agree what support should be available.
- The use of mediation services to help support and manage contact issues.

Question 6

Any other comments

About half of respondents provided comments under this heading. The issues /comments included that:

- There should be a 'central agency' to provide independent advice and knowledge to special guardians and birth family member.
- Local authorities and the judiciary should discuss the issue of supervision orders being awarded special guardianship orders.
- Research should be commissioned to identify the outcomes for children who are placed on SGOs.
- Feedback should be provided to the courts and Local Family Justice Boards (LFJBs) about how well children progress with special guardianship placements and on the level of disruption.
- The government should raise awareness about special guardianship, for example with the Passport Office, to improve the accessibility and access to services for special guardians and their children.

Annex A: List of organisations that responded to the consultation

Local authorities (67)

- Barnet
- Bedfordshire (Central)
- Birmingham
- Blackpool
- Blackburn with Darwen
- Bournemouth
- Bristol
- Bury
- Cambridgeshire
- Camden
- Cheshire East
- Cleveland
- Derby City
- Derbyshire
- Devon
- Ealing
- East Riding of Yorkshire
- Enfield
- Essex
- Gateshead
- Gloucestershire
- Greenwich
- Hackney
- Hampshire
- Herefordshire
- Hounslow

- Islington
- Kingston upon Thames
- Lambeth
- Leeds
- Leicester City
- Liverpool
- Luton
- Manchester
- Middlesbrough
- Morden
- Northamptonshire
- Nottingham City
- Nottingham County Council
- Oxfordshire
- Portsmouth
- Preston
- Plymouth
- Redcar and Cleveland
- Richmond
- Salford
- Sandwell
- Slough
- Solihull
- Southend-on Sea
- Southwark
- Staffordshire
- Stoke on Trent
- Suffolk
- Surrey
- Thurrock
- Tower Hamlets

- Triborough (Hammersmith and Fulham, Kensington and Chelsea, Westminster)
- Walsall
- Wandsworth
- Warwickshire
- Warrington
- West Sussex
- Worcestershire
- Wirral

Organisations (30)

- Adfam (Families, Drugs and Alcohol)
- Adoption UK
- Association of Directors of Children's Services
- Association of District Judges
- Association of Lawyers for Children
- British Association of Social Workers
- Cafcass
- CCS Adoption
- CoramBAAF
- Coram Children's Legal centre
- CSC consultants
- Family Justice Council
- Family Law Bar Association
- The Fostering Network
- Fostering Through Social Enterprise
- Greater London Family Panel
- Justice Clerks Society
- Kinship Care Alliance (Family Rights Group, Buttle UK, Childhood Bereavement Network, The Grandparents' Association, Grandparents Plus, Kinship Carers UK, NAGALRO* (National Association for Professional Association of Guardians and Independent Social Workers), Mentor and Siblings Together)

- The Law Society
- Lawyers in Local Government Child Care Lawyers Group
- The Magistrates Association
- National Independent Reviewing Officer Managers Partnership
- Nationwide Association of Fostering Providers
- North London Adoption and Fostering Consortium
- Ofsted
- Partnerships in Children's Services
- Research in Practice
- Resolution Foundation
- TACT – The Adolescent and Children’s Trust
- West Sussex Inspire Project

*NAGALRO also submitted a separate response

Annex B – Summary of research

Background

Special guardianship orders were introduced in December 2005 because it was felt a new legal order was required to give permanence and security to a particular group of children who did not have access to this via other routes. The children in mind included older children, children already settled with a relative or foster carer, and groups such as unaccompanied asylum seeking children² (DfES; 2005; p4)

SGOs can be used in both private and public law i.e. either for children in care or not in care. HMCTS data indicates that there is an approximate split of around 70% of SGOs awarded in public law cases and 30% awarded in private law cases.³

DfE commissioned Jim Wade in 2012 to investigate special guardianship. The report was published in 2014⁴, containing quantitative data for all SGOs made between January 2006 -December 2011, and more intensive qualitative analysis, including follow ups with special guardians, over a 3-6 year period in 8 local authorities.

The Wade report identifies a year on year rise in the use SGOs since 2011, with around 87% of SGOs awarded to grandparents or uncles/aunts, and the majority of the remaining children on SGOs awarded to former foster carers.

At that point, the profile of children on an SGO under the age of 5 (52%) was very similar to those for whom adoption was the plan, 'with high levels of maltreatment and familiar characteristics in the birth parents - drug and alcohol misuse, serious mental health problems and domestic violence'. The most robust SGOs were where the child had experienced fewer placements and where there was an existing strong relationship between the child and the special guardian.

Since the Wade report was published, we have been told by local authorities that the court judgments Re B⁵ and Re B-S⁶ have led to SGOs often being perceived as the 'default option' when considering a child's long-term future. Local authorities have also indicated that the introduction of the Public Law Outline (PLO)⁷, requiring proceedings to be completed within 26 weeks, has led to cases being resolved more quickly, but with some SGOs made within very short timescales, not allowing for the level of analysis and

² <https://www.gov.uk/search?q=special+guardianship>

³ <https://www.gov.uk/search?q=family+court+statistics>

⁴ <https://www.gov.uk/search?q=special+guardianship>

⁵ <http://www.familylawweek.co.uk/site.aspx?i=ed114409>

⁶ <https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Judgments/b-s-children.pdf>

⁷ https://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_12a

placement transition/settlement necessary to avoid potential disruption later down the line.

The report produced by Research in Practice on the impact of the family justice reforms on local authorities⁸ and the follow up study into special guardianship⁹ (both published by DfE in July 2015) further tested the hypotheses with 6 local authorities that the court judgments and PLO compliance were having a potentially negative impact on how special guardianship was being used.

The extent of the issues highlighted on pages 5-6 relating to the use of SGOs is difficult to assess. This is, in part, because of the wide variation in the use of SGOs across local authorities: the qualitative analysis is not necessarily representative of the picture in all local authorities. The case file analysis by Research in Practice has also identified variation in the information produced for court by local authorities, which makes robust comparison between the tracking of cases through to final hearing difficult. In addition, because SGOs are relatively new orders, we do not yet hold adequate data to be able to make some direct comparisons with other orders e.g. on disruption in adolescence.

Despite the above caveats, we are confident that the evidence we do have paints a clear picture of concerns relating to special guardianship orders that need to be addressed.

Research evidence from the Special Guardianship Review

As part of the review, we commissioned Research in Practice to undertake an analysis of 51 case files at 5 local authorities. In addition, Cafcass also undertook an analysis of 51 of its case files and The Nuffield Foundation extended its existing study of supervision orders to provide a quantitative analysis of SGOs and SGOs awarded with SOs. These pieces of research, together with the DfE statistical first release (SfR) 2014-15 for children looked after (CLA) and the Call for Evidence responses, have formed the basis for the review's findings. Links to the separate research reports are provided at the end of the document.

The changing use of SGOs

Special Guardianship was introduced as a new permanence option for children in December 2005. At the time it was considered that a new legal order was required to meet the needs of a significant group of children; these included mainly older children who had become separated from their birth family; children already settled with a relative or foster carer; and groups such as unaccompanied asylum seeking children, minority ethnic groups who have cultural difficulties with adoption and unaccompanied asylum-

⁸ <https://www.gov.uk/search?q=Research+in+Practice+impact+of+PLO>

⁹ <https://www.gov.uk/search?q=Research+in+Practice+special+guardianship>

seeking children who may need a secure legal basis without breaking the strong attachment they may have with their family abroad.¹⁰

While the guidance makes no explicit statement to restrict SGOs to these groups of children, it is implicit in indicating that SGOs were originally intended to create a more permanent situation for older children already in a placement for whom adoption was not suitable. Since 2005, however, there has been a rise in the use of SGOs for much younger children and more are now being awarded to carers with whom the child is not resident.

Increasing use of SGOs

There were 3,520 SGOs awarded in 2014-15, up from 2,150 in 2011-12. While there has been a year on year rise in the use of SGOs since 2011, the overall increase in SGOs made for children leaving care in 2014-15 is significantly slower than in recent years: between 2012-13 and 2013-14, the number of SGOs granted increased by 22%, while between 2013-14 and 2014-15 they only increased by a further 5%¹¹ (SfR - Children looked after in England (including adoption and care leavers) year ending 31 March 2015).

Increased use of SGOs for very young children

Wade described children on an SGO as 'on average, somewhat older than those adopted.' Yet, there has been a noticeable increase in the numbers of children under the age of 1 leaving care on SGOs since his research was completed: There was a rise of 65% in children under 1 between 2012-13 and 2013-14 ceasing care on an SGO - from 320 to 520 children, and there were 100 more children (620) ceasing care on an SGO in 2014-15 representing a further rise of 20%.

Increased use of SGOs for carers other than former foster carers

The 2014-15 SfR also identifies a rise in numbers of carers other than former foster carers becoming special guardians: this was up 38% in 2013-14 and another 17% in 2014-15. In contrast, there was a reduced number of former foster carers becoming special guardians (up only 10% in 2013-14, and down by 7% in 2014-15.) This is the first year since SGOs were introduced that the number of children on SGOs in former foster care placements is lower than children going to other carer placements (1,630 to former foster carers and 1,890 to other carers.)

¹⁰ <https://www.gov.uk/search?q=special+guardianship>

¹¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/464756/SFR34_2015_Text.pdf

This data reinforces a theme from the Call for Evidence that some foster carers feel disincentivised from becoming special guardians, potentially because of the impact this might have on financial and other support.

Should we be concerned about the changing use of SGOs?

In October 2015, ADCS and Cafcass issued a joint policy statement which articulates their concerns that SGOs are currently being awarded where they may not serve the best long-term interests of children : 'Whilst Special Guardianship is a positive option for many children, we are writing this note out of concern about a number of cases where we believe children have been placed at risk through a Special Guardianship Order being made without sufficient consideration of the placement's long-term viability'.¹² These concerns have been raised repeatedly over the course of the review.

Challenges to viability assessments

The Research in Practice case file analysis found that 10 of the 51 cases had a plan for adoption at some point during care proceedings. In 9 of the 10 cases, the eventual special guardian had been the subject of a negative viability assessment and the court ordered an independent re-assessment of the prospective special guardian, eight of which were then deemed to be positive. These findings suggest that challenges occurring at this point in proceedings could be avoided through better quality assessments being undertaken earlier.

This also links with Call for Evidence responses about the need for more effective early work with families, combining the early identification of realistic prospective special guardians with more robust assessment, to reduce challenges to evidence presented, which cause delay and uncertainty.

Use of Supervision Orders with SGOs

Professor Harwin et al's research¹³ funded by the Nuffield Foundation indicates that national use of supervision orders with SGOs is now 29%, (up from 11% in 2010/11) although there is regional variation in the use of both orders individually and together. 24 respondents to the Call for Evidence were concerned that more SGOs were being granted with SOs which they felt indicated that the courts and/or local authorities had concerns about the placement.

¹² http://adcs.org.uk/assets/documentation/ADCS_cafcass_SGO_6october2015.pdf

¹³ Harwin J., Alrouh B., Palmer M., Broadhurst K. and Swift S. (2015). A national study of the usage of supervision orders and special guardianship over time (2007-2016): briefing paper no 1. Available from: <http://www.nuffieldfoundation.org/supervision-orders>

Use of SGOs where there is no established relationship with the child

Wade states in his report (p20) that 'many practitioners were concerned about the longer-term implications for stability where strong bonds were not already evident'. In the Research in Practice case file analysis, 6 out of 51 SGOs had been awarded where there had been no established relationship with the child, and in 1 of these cases contact only happened with the child after the order was made.

Research in Practice local authority case file analysis – Summary of findings

The key findings below derive from a qualitative analysis of 51 case files where children were the subject of a Special Guardianship Order (SGO) in five local authorities, with a particular focus on children aged four years old and younger. The case file analysis was conducted between August and September 2015 and included SGOs that were made between November 2014 and August 2015. It is important to note that the findings derive solely from information that was available on the local authorities' case file system at the time of the study. The study did not include an analysis of court documents relevant to the cases, nor did it include interviews with the social workers, local authority lawyers, special guardians or court officials involved in the case. It does not compare the current data with SGO decision making and usage before the introduction of the revised PLO.

Accordingly, it presents a picture of SGO usage from the local authority perspective at a particular point in time and for a particular age group of children. It is vital, therefore, not to draw erroneous conclusions based on this limited data. Nevertheless, many of the findings in this study are consistent with those of other studies (e.g. Wade et al, 2014; Research in Practice, 2015a and b) which, taken together, provide a compelling picture of SGO usage

Key findings

- i. Almost all the cases (47/51) in this study involved children in public law proceedings, with a number of issues present in these children's lives, including parental domestic violence, parental drug and alcohol abuse and parental mental health problems. The remaining four cases involved SGO applications with respect to children who were known to children's services, but where proceedings had not been issued and could be characterised as 'edge of care' cases.
- ii. The majority of special guardians (46/51) were blood relatives of the child, with grandparents comprising over half of these. The majority came forward as potential carers relatively early in the legal process. There were only two identified cases where extended family member came forward late in proceedings.
- iii. Family Group Conferencing was used in around 20 per cent (17/51) of our sample. The use of FGC services varied considerably across these five LAs; half of these

FGCs were held in one local authority while in some other local authorities FGCs did not always take place even when they had been recommended.

- iv. Parallel or twin track planning was used when considering permanence options for these children. Placement with the extended family was always the first consideration, and in these cases adoption only became the preferred option when all extended family members had been ruled out as carers as a result of negative assessments.
- v. Just over half the children were living with their special guardian prior to the order being made. Where children had not previously been living with their guardian there was generally a short period of introductions and contact prior to the child moving in with the special guardian. Files would be required in order to explore this fully.
- vi. The assessments for special guardians covered a range of issues and highlighted both positive and negative factors in relation to the prospective guardian. The main concerns noted were around contact arrangements and the ability of the special guardian to keep the child safe from risks posed by the birth parents. Other issues included historical safeguarding concerns with regard to their own children and concerns around the special guardian's ability to respond to the child's complex emotional/behavioural needs.
- vii. Ten of the 51 cases had a plan for adoption at some point during care proceedings. In nine of these ten cases, the eventual special guardian had been subject of a negative viability assessment and (since there were no other known extended family members who might care for the child) the local authority went to court with a recommendation for adoption. In these nine cases the court ordered an independent re-assessment of the prospective special guardian. In eight of these cases, the independent social worker's assessment of the prospective special guardian was positive and the local authority accepted the findings of the assessment and changed the plan from adoption to SGO. In the ninth case, the independent assessment was negative, in agreement with the original local authority assessment but the court went on to grant a SGO. In the tenth case an alternative family member came forward as a carer late in proceedings, following negative assessments of other family members, and was positively assessed. It is not possible from the case file data to determine what factors changed in relation to the concerns noted in the local authority viability assessments and the eight subsequent positive independent assessments. Further research would be needed to explore this in more depth.
- viii. Support plans were available for almost all the cases; these varied in their content and depth. The majority of support plans had provision for a means tested financial allowance and a substantial proportion also included support for contact with birth parents, although this provision was generally limited to the 12 months after the SGO was made. However, some of the support plans did not include

specific provision for services to support children's identified emotional and behavioural needs.

- ix. Just under half of the SGOs had a Supervision Order attached. There was wide variation between the five local authorities (and by implication the local courts) in the proportion of SGOs made with Supervision Orders attached. These case files generally indicated that the reason for the Supervision Order was for monitoring and support purposes. A Supervision Order was attached to the SGO in seven of the ten cases discussed at vii above.

Cafcass case file analysis – Summary of findings

<http://www.cafcass.gov.uk/contact-us/research.aspx>

Child and family information

All but one of the families were known to the local authority prior to proceedings, with some level of intervention and support, including attempts at reunification. Some families had been involved in previous care or private law proceedings.

Risks within the birth family included some or all of the following factors: domestic violence, drug/alcohol misuse, parental mental health, chaotic lifestyle, and a lack of engagement with services. Some parents were young, were recognised as vulnerable adults, and/or had themselves been removed from their birth families. As is commonly the case where concerns relate to parental lifestyles, proceedings had been instigated primarily due to neglect. Reunification did not seem to be a viable option, due to the chronic risks in the case and earlier unsuccessful attempts at support.

When proceedings started, almost all children in the sample were in a form of 'alternative' care; some as a result of emergency measures, and others through informal placements made by the family. Some older children remained at home on supervision orders, while some very young children were in mother and baby placements. The children not in their parents' care were split fairly evenly between friends and family placements, and unrelated foster carers, though the former were slightly more prominent in this sample.

Most of the special guardians came from the child's family, with maternal family members being more likely applicants within this sample. Others were current or former foster carers of the child, or family friends. Birth parents were generally in favour of the SGO, the inference being that this was preferable to long-term out of family care. In some cases the birth parents voiced initial concerns with the placement, particularly if they did not have a positive relationship with the prospective special guardians.

What is working well?

Around half of the orders reflected the intended use of special guardianship orders, as set out in the DfE consultation paper, as a permanence option for 'a significant group of

children' including older or more difficult to place children, and those already settled with a relative or foster carer. (See case examples)

Whilst our primary purpose was to describe the assessment of special guardians, we formed tentative views as to the appropriateness of the placements, using a three-part typology: robust; suitable; may not meet all of the child's long term needs. The results, set out below, show that we considered about four-fifths of cases reviewed to be robust or suitable. There was, however, a concerning minority of placements which appeared unlikely to meet the child's needs in the long term. No inferences about SGOs as a whole should be drawn from these figures.

	Number of cases
A robust placement for the child	25
Suitable placement for the child given circumstances and possible alternatives	16
A placement that may not meet all of the child's long term needs	10

The Nuffield Foundation quantitative analysis of SGOs and SGOs awarded with Supervision Orders

<http://www.nuffieldfoundation.org/supervision-orders>

A national study of the usage of supervision orders and special guardianship over time (2007-2016)¹⁴ (funded by the Nuffield Foundation)

Briefing paper no 1: special guardianship

This briefing paper forms part of the first national study on supervision orders and their contribution to family justice, children's services and child outcomes.

Aims of Phase 1

- To describe national and regional trends in the use of SGOs over the period 2007/08 - 2014/15 and compare patterns with other legal permanency options for children subject to public law proceedings because of significant harm

¹⁴ Harwin J., Alrouh B., Palmer M., Broadhurst K. and Swift S. (2015). *A national study of the usage of supervision orders and special guardianship over time (2007-2016): briefing paper no 1*. Available from: <http://www.nuffieldfoundation.org/supervision-orders>

Aims of Phase 2

- To track per child pathways and legal outcomes over time
- To draw comparisons and appraise the sustainability of final care plans/orders
- To produce national per child SGO disruption rates and monitor returns to court
- To link Cafcass legal order data with DfE LAC outcome results

Methodology for Phase 1

The data is derived solely from the Cafcass¹⁵ electronic administrative database

- Inclusion criteria:-
- At least one child was included in the set of proceedings.
- The case included at least one S31 (care or supervision) or placement application.
- The start date of the first application the start date of the first application in a set of child proceedings was during the research timeframe (1/04/2007 - 31/03/2015).

Summary of key findings (Phase 1)

- There has been a steady rise in the number and proportion of SGOs resulting from public law proceedings since 2007/08.
- There has been a marked change in the ratio of usage of SGOs since 2012/13 when compared to placement order trends. The proportion of placement orders has declined as the share of SGOs has risen.
- There has been a rise in the use of supervision orders attached to SGOs. In 2014/15 28.7% of SGOs were accompanied by a supervision order, up from 11.2% in 2010/11
- The age profile of children on SGOs is changing. The proportion of infants under-one has increased, particularly in the last three years.
- The median length of proceedings, irrespective of application or order type, almost halved between 2010/11 and 2014/15. Applications resulting in a special guardianship order are in line with this trend. However they generally take longer to complete than placement orders.
- There are marked regional variations in the ratio of use of all order types including special guardianship. The use of supervision orders attached to SGOs also varies regionally.

¹⁵ We are grateful to Cafcass for providing access to their electronic databases and especial thanks to Richard Green, Bruce Clark, Anthony Douglas, Liz Thomas, Holly Rodgers and Jigna Patel for their help and support.

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- Bridget Lindley - Family Rights Group
- Carol Homden - CORAM-BAAF
- Steve Walker - ADCS
- Jane Sigley - Ministry of Justice
- Richard Green – Cafcass
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