

Summary 2 December 2010

Special Guardianship in Practice

This study is part of the Adoption Research Initiative (ARi), a group of major research projects commissioned by the former Department for Education and Skills (DfES). The dissemination of key messages from the initiative was funded by the Department for Education.

The study was undertaken by Jim Wade and his colleagues at the University of York¹ and it is part of a wider study of permanent placements for children². Data was gathered between 2006 and 2008

This summary is based on a longer research brief and the full report of the study³. It reviews the methodology and findings and highlights the key messages from the research. Information about other resources from the study is available at the <u>ARi website</u>.

1. Background to the study

After the introduction of the Children Act 1989, the main permanence options for looked after children who could not return to their birth parents were adoption, residence orders or long-term fostering. The Adoption and Children Act 2002 introduced (from December 2005) a further permanence option in the form of special guardianship.

A special guardianship order provides legal permanence for children for whom adoption is not appropriate, and gives a special guardian 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).

Local Authorities (LAs) must make arrangements for the provision of special guardianship support services. While an

¹ The full research team was Jim Wade, Jo Dixon and Andrew Richards, University of York.

application cannot be made to discharge a special guardianship order without the 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, special guardians have a more limited legal relationship with the child and less protection against further litigation than adopters.

2. What was the purpose of the study?

The study had three principal aims:

- To describe how 8 LAs were implementing special guardianship and to identify policy, procedure and resource issues that arose in the first two years after special guardianship was introduced.
- To explore how the special guardianship provisions were being used through examining the characteristics, circumstances and motivations of special guardians and seeking the views of their children.
- To describe the experiences of those seeking special guardianship both before and after the order.

3. How was the research done?

There were three main sources of information:

- A policy study based on the analysis of documents and interviews with 38 managers in 8 LAs and with 10 professionals from national child welfare and legal agencies.
- **A survey** of 81 special guardianship applicants and their social workers in the 8 LAs.
- Case study interviews with 15 special guardians and, where feasible, their children (3).

Because this research was combined with a wider study of adoptive and long-term foster placements, it provided an opportunity to compare some characteristics of children entering special guardianship households with children in other forms of permanent placement.

² See Summary 1 in this series.

³ The summary was drafted by Mary Beek, Professional Adviser to the Adoption Policy team, Department for Education, in consultation with the research team.

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4. What were the key findings? The implementation of special guardianship

- The degree to which the LAs had risen to the challenge 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 who were ready to 'champion' change.
- 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 before and after the order depended on the type of case and often involved a patchwork of teams handling different aspects of the process. 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 were more coherent and comprehensive.

Who was applying and why?

- Most take-up in the first two years was from relatives (86%), with grandparents in the majority. The children concerned were young, with 52% aged five or under. Most (74%) had been living with their carer before the application, often for a lengthy period.
- Over two-thirds had been looked after immediately before the application, just under half 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).
- Take-up from unrelated foster carers was low (13%) due largely to concerns about financial uncertainty, the likely loss of social work support and the potential difficulties of managing birth family relationships. In response, some LAs were beginning to offer guaranteed financial and support packages for the duration of the placement, rather than just for a minimum of two years as specified in guidance.

- Special guardianship was being used for a broad range of children. Most cases had 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. Special guardians were motivated by the desire to provide a stable home, to have greater parental control and legal security and also to keep children within the family network or return them to it from the care system.
- While there were encouraging signs of take-up within some minority ethnic communities, there was little evidence that unaccompanied asylum-seeking children had been considered for special guardianship.

Procedures and practice

- There was widespread concern amongst practitioners about the three month timescale for completing assessments and court reports. This time period was frequently felt to be too short for indepth coverage, reflection, analysis and for the preparation of the carers.
- A higher than expected number of prospective special guardians were planning to care for children who had never lived with them before. In these circumstances, given the legal implications of the order, some practitioners questioned whether there should be provision for 'pre-application' arrangements for the child. This would be similar to the pre-order period in adoption.
- Quality assurance mechanisms were variable. In two areas, public law cases were brought to permanence panels for a recommendation. In other areas, cases were signed off by senior officers. However, it was not always clear how 'private' applications concerning children not previously known to local authorities were quality assured, if at all. In these cases, there was felt to be a need for further guidance to clarify and strengthen safeguarding and quality assurance procedures.
- The survey findings offered encouragement regarding social work practice. Most special guardians felt that the key assessment areas had been covered in sufficient depth. However, some were frustrated by delays in the process, and the duplication of information collected by different professionals. Some also felt that the process was overly intrusive.

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

Outcomes

- Most children (65%) had been living with their carers for two years or more at the point of data collection. Most carers (76%) and social workers (83%) 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 thriving, 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.
- 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 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, difficulties sometimes occurred within families that reduced these sources of help.

Support

 LA differences in implementing special guardianship had implications for the services that were provided. LAs that had organised their services earlier and

- invested in specialised teams were more likely to have developed a coherent range of services. In LAs with higher numbers of applicants, there was evidence of resource strain on postorder 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%) were no longer in touch with special guardianship families. For some special guardians, early case closure was welcome. 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 had not been addressed.
- One-third of children had received some therapeutic input, mainly from Child and Adult Mental Health Services. Well over half of carers had received help with birth family contact. In comparison with foster carers, 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 offered by local authorities.
- Specialist teams tended to have a wider range of informal strategies for staying in touch with carers, including support groups, newsletters and social events. These provided easier routes back into services when needed. Informality and flexibility was important, since family carers sometimes feared that they would be perceived as not coping if they asked directly for help. Simply providing a signpost to a duty service was therefore unlikely to be effective.

Financial support

Arrangements for providing financial assistance varied considerably across and within LAs. In general, financial support for former foster carers tended to be greater than for other carers. For former foster carers, allowances were more likely to be protected for at least two years and, in some cases, for the duration of the arrangement. Financial support, if provided at all, was much more varied for carers of children not previously looked after or known to children's services.

- The level of payments was also inconsistent across authorities. In some LAs, payments were linked to fostering rates and in others to adoption or residence order allowances, which tended to be lower. The special guardianship guidance suggests local authorities should have regard to fostering allowances when determining the amount of any ongoing financial support and this guidance has been reinforced subsequently by case law⁴.
- However, 90% of special guardians were in receipt of a regular allowance. Half of them 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.

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

Comparisons with long-term fostering and adoption

■ Initial comparisons with children in the companion permanent placements study reveal both similarities and differences⁵. Differences in the way the samples were drawn make these comparisons 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), although 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%) was very similar to that for children adopted by strangers. 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, overall. The background circumstances of children across all forms of permanence were similar in terms of maltreatment and parental difficulties.

5. Strengths and limitations of the research *Limitations*

- This survey reflects practices in the first two years of Special Guardianship when many agencies were planning and developing their services. The findings can only give a 'snapshot' of what was happening during the study time period and this will not necessarily reflect current practice.
- It was only possible to interview a small number of young people for the study. The perspective of more children is likely to have further illuminated the subject.

Strengths

- The proposal for the study was independently and anonymously peerreviewed before the work was commissioned.
- The report was independently and anonymously peer-reviewed before its publication.
- The data for the project was gathered from multiple sources.
- The project used a highly experienced research team with significant experience of researching adoption. All data was cross checked within the research team.

⁴ 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).

⁵ 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 (See Summary 1 in this series).

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Key messages

This research provides evidence of special guardianship becoming embedded as a permanence option with much positive work being done to establish and develop it. The following suggestions for service development are drawn from the research findings:

- Develop management and practitioner experience and expertise in the whole process of special guardianship, before and after commencement of the arrangement. There is a case for specialised teams, groups or individuals where numbers warrant them.
- Plan for the future. Many special guardians are grandparents who will be in their 70s when their children reach adolescence. Assessments of special guardians may need to take this into account and help applicants to consider contingency plans if they are not able to be full time carers at this stage.
- Be flexible when preparing and assessing special guardians. Getting the assessment balance right is a major challenge. On the one hand, there is a clear need for a robust and comprehensive assessment process to safeguard children. On the other, the assessment should have a flexible and inclusive format that engages applicants, many of whom will not have freely chosen to assume a caring role.
- Provide appropriate support. Children entering special guardianship have much in common with children entering other forms of permanence. The survey highlighted the need for support with complex and conflicted family relationships, therapeutic input for the children and for support groups, training and social activities for their caregivers.
- Make a case for adequate current and projected funding. While special guardianship undoubtedly offers a valuable permanence option for some children, it is much more likely to work successfully if it is adequately resourced and special guardians are supported to deliver the care that children need.