Department for Education

# Impact of the Family Justice Reforms on Front-line Practice Phase Two: Special Guardianship Orders

## Research report

## August 2015

Research in Practice

## Acknowledgements

The Research in Practice team would like to extend our thanks to the six local authorities for supporting this study. Thanks are due to the Assistant Directors/ Heads of Service in helping to set up the interviews within a very tight timeframe and all the professionals in the local authorities and Cafcass who generously gave their time to share their experiences.

We are also grateful to Angela Joyce and Patrick Towgood at the Department for Education for supporting the research and for their invaluable feedback. Thanks are also due to Jim Wade at the University of York and Robert Tapsfield for providing comments and feedback on the report.

## Project team

Dr Susannah Bowyer, Research Director, Research in Practice

Dr Julie Wilkinson, Research Associate, Research in Practice

Janet Gadsby Waters, Research Associate, Research in Practice

## Disclaimer

# Contents


Acknowledgements 2

Project team 2

Disclaimer 2

1. Introduction 5

1.1 Background 5

1.2 Aims and Methodology 6

1.3 Research and policy context and limitations of the research 7

2. Decision-making on type of order 8

2.1 Factors and processes 8

2.2 SGO versus adoption versus long-term foster care 9

2.3 The courts' approach to SGOs 10

2.4 Issues and challenges around SGOs 13

3. Identifying extended family members 15

3.1 Family group conference 15

3.2 Challenges in identifying extended family members 16

4. Assessment of potential special guardians 18

4.1 Key features of assessments 18

4.2 Challenges in undertaking assessments 20

4.3 Overcoming the barriers to assessment 22

5. Support provided to special guardians 25

5.1 Types of support 25

5.2 Barriers to providing support 28

5.3 SGO outcomes 30

6. Conclusion 32

6.1 Key findings 32

6.2 Messages for policy and practice 33

References 35

# 1. Introduction

## 1.1 Background

Phase one of this research investigated the impact of the family justice reforms on local authority practice. Through interviews with local authority and Cafcass professionals[1], it explored how local authorities are working to implement the revised Public Law Outline (PLO). It also looked at professionals' perceptions of the types of orders for which local authorities (LAs) are applying and which the court are granting. Some of the changes discussed were an increased use of Special Guardianship Orders (SGOs) over recent years, and SGOs being used in a wider range of circumstances.

This finding is consistent with recent statistics showing the increase in the proportion of children leaving care through an SGO, from 5 per cent in the year ending 31 March 2010 to 11 per cent in the year ending 31 March 2014 (Department for Education, 2014a). As well as an increase in children leaving care for Special Guardianship, there also appears to be an increase in cases arising during (or sometimes prior to the initiation of) care proceedings (Wade et al, 2014).

Wade and colleagues (2014) estimated that between 2006 and 2012, 13,000 SGOs were made, of which almost a quarter were made either as an alternative to or as an outcome of care proceedings[2]. This is in line with the requirement for local authorities to explore placement within the family network before considering a long-term placement with strangers (Department for Education, 2014b).

During the period that Wade's research covered (2006 to 2012), there was no evidence of a reduction in the number of adoption orders being granted, suggesting that there had been an overall increase in permanent placements for children (Wade et al, 2014). This is consistent with the rise in the number of children adopted between 2010 and 2014 (a 58 per cent rise between 2010 and 2014) (Department for Education, 2014a).

More recently, however, there has been a sharp decrease in the number of placement orders being made; between 1 September 2013 and 30 June 2014 the number of placement orders granted by the court decreased by 54 per cent, from 1,650 to 750 (Adoption Leadership Board, 2014). This has been attributed, in part, to Supreme Court and Court of Appeal judgments in 2013, most notably Re B and Re B-S, which appear to have led to a perception that higher thresholds are required when seeking adoption for children (Bentley, 2014).

---

[1] The study did not utilise statistical or case file data; therefore the findings represent the perceptions and views of professionals and cannot be triangulated.

[2] These data are from two different data sources; the former is from a national survey of LAs, the latter is from a smaller survey sample (n=230 families), and is less reliable.

The conversations that informed phase one of this deep-dive study, and information from Department for Education seminars with lawyers, identified a number of challenges that LAs are facing in relation to SGOs, including difficulties in identifying family members early in proceedings; concerns around the assessment of and support provided for special guardians; SGOs being used for younger children than previously; SGOs being used when

there is no existing bond or relationship between the child and carer. These issues were all also noted by Wade et al (2014; Wade 2015).

The Department for Education commissioned Research in Practice to undertake further research to explore local authority practice and decision-making with regard to SGOs to gain a deeper understanding of changes in local authority professionals' perspectives of how SGOs are being used since the reforms compared to previously.

## 1.2 Aims and Methodology

This deep-dive investigation aimed to explore professionals' views on the following areas of practice:

- The process for making decisions on which order to recommend to the court
- Changes in approach to the way SGOs are being used since the reforms
- The circumstances in which special guardianship tends to be viewed as a positive option
- Identification and assessment of extended family members/connected persons
- Preparation and support for special guardians
- The courts' approach to granting SGOs
- Outcomes of SGOs

The focus was on SGOs granted for children on the edge of care or as a result of care proceedings, although interviewees were also encouraged to discuss SGOs more widely where relevant.

The research was undertaken over a three week period in March 2015 in the same six LAs as in phase one. Telephone interviews were held with 19 professionals. These included:

- Assistant Directors/Heads of Service (4)
- Lawyers (3)

- Managers (including case managers, managers holding responsibility for assessment and support of special guardians) (8)
- Cafcass managers (4)

Time constraints[3] informed a decision not to hold interviews with case holding social workers as we knew from information gathered in phase one of the investigation that many social workers held only a few SGO cases and would not have an overview of the issues.

All interviews were recorded with the permission of those taking part and subsequently transcribed. The data were inputted into a template to facilitate thematic analysis. In order to protect the anonymity of those involved, direct quotes have not been attributed to named LAs.

## 1.3 Research and policy context and limitations of the research

SGOs are used in a range of different situations, for example for children in long-term foster care; children living with relatives with the agreement of the birth parents; where care proceedings are issued. Not all of these have the same issues and challenges. The focus of this research was on public law cases for children on the edge of care  where care proceedings are likely to be instigated; these are cases where there is likely to be more contention and challenge in comparison to other types of SGO cases.

This deep-dive investigation was conducted within a very tight timeframe in only six LAs. Interviews were not conducted with parents, special guardians, or the judiciary; accordingly, the findings represent the views and perceptions of the professionals that took part and cannot be taken to represent the views of professionals in other LAs or of parents, guardians and the judiciary.

These limitations should be taken into account in interpreting the findings.

The following chapters of the report present the findings from this investigation, and set these in the context of findings from other methodologically robust research on Special Guardianship.

[3] The interviews needed to be completed before the end of March 2015.

# 2. Decision-making on type of order

## 2.1 Factors and processes

Professionals stressed that they aim to keep children with their parents wherever possible. They discussed how the reforms and recent court judgments have made them think more about how to identify extended family members as alternative carers when children are not able to remain with their parents. They also discussed twin-tracking for adoption if they are in any doubt about the placement of a child.

> *With implementation of the PLO it has forced us to be more robust in how we look at family members - there has been a change in culture of assessing family members on whether there is a realistic option for children, and also not making this unachievable (Manager).*

They discussed a number of factors that they take into account when considering potential permanence options, including:

- the child's age
- the potential special guardian's age
- strengths of the family network
- who can safeguard the child effectively
- developmental, health and emotional needs of the child
- foster carer's view (if the child is in foster care).

> *Decision-making around the child, it's about whether a permanent home away from parents is required, then there is balancing that if this child is going to need a permanent home, will that be best provided through adoption, which is set against what members of the extended family have come forward, who could potentially be applying for SGO - it's a case by case decision, it's about looking at the pros and cons of different ways of achieving permanence for the child (Assistant Director).*

Social workers do not make the decision about which order to recommend to the court in isolation; cases are first discussed in supervision and then in the legal planning meeting. The following provides an example of the process in one LA:

### Local practice example

> *We have a pro-forma legal planning advice document which sets out the background to the case, reasons whether or not threshold for care proceedings has been met, separate box which sets out proportionality, whether or not order*

*can be applied for and if so what type of order, whether it should be dealt with under pre-proceedings or go straight to proceedings and what order should be sought at the interim stage. From there the case moves to the entry to care panel - there is an examination of evidence by senior managers to ensure rigour in the process. The social worker presents the case to the panel and the panel balance different options - pre-proceedings, order, family members etc (Lawyer).*

## 2.2 SGO versus adoption versus long-term foster care

Statutory guidance states that an application for an SGO may be made by a broad range of people, including:

- an existing guardian
- anyone holding a residence order or with consent from those who have one
- anyone with whom the child has lived for three out of the past five years
- a relative or local authority foster carer with whom the child has lived for at least one year (Department for Education and Skills, 2005).

The statutory framework does not provide for introductions, matching or for a period of settling-in, as would always be the case in adoption, reflecting the expectation that the child and special guardian know one another well (Wade et al, 2014).

There was a view amongst many informants that the use of SGOs has moved away from the original intention outlined above. They also expressed concerns that more 'fragile' SGOs are being sanctioned by the court following Re B-S.

SGOs have changed from their original purpose, it's all got a bit muddled up - when it first came in it was focused for asylum seeking children, children in long-term foster care, to take them out of the care system - they weren't meant for babies or an alternative for adoption - they are being used for all sorts of variable placements these days - for younger children, with friends, not just family members - some of it contradicts the purpose of SGO (Cafcass manager).

More fragile SGO assessments are being sanctioned by the court. You have done the assessment, and think it's just good enough to look after the child; the threshold is just good enough. It's because of the emphasis on Re B-S and a focus on placing with kinship, which is explored first. Under normal circumstances the carer probably wouldn't make it, but we are forced to really look at why we are ruling out a relative. More fragile SGO placements are being made rather than adoption (Manager).

Many interviewees thought that SGOs should not be used for babies and very young children and saw adoption as a better permanence option for these children. However, this was not the view of everyone.

*Under two-three year olds really need the protection of permanence through adoption rather than the half way point that SGOs represent (Assistant Director).*

*Although SGO offers a level of permanence, it doesn't offer the same level of permanence as an adoption order, where the child is totally and solely owned by that family… from the carers perspective they may love that child, but you are effectively a guardian of the child, you are not their mother and father - if the child is adopted they become very much a part of a new family (Assistant Director)*

*The ethos is if a family member is positive we will always go with that choice even for younger children who could easily be adopted (Manager).*

Social workers also need to consider whether long-term foster care might be a more appropriate option for a child. For some interviewees, long-term foster care was viewed as a better option when a more structured placement was needed to provide long-term support for the child. However, professionals were more in favour of children remaining within their family network, where this was in their best interests, as this provides greater security than long-term foster care.

*[We] need to think about the strengths of the relative and their ability to manage the child's whole minority. You also need to think about support for SGO or whether it needs a trained, experienced foster carer, whether they need to remain a looked after child and be subject to statutory LAC reviews, health assessments, educational packages (Manager).*

*You want a long-term secure order, which special guardianship represents - security because carers have a say in the child's planning and decision-making, and it is intrusive in the child's life to have social workers involved (Manager).*

## 2.3 The courts' approach to SGOs

There was a view amongst some that local courts had changed their approach towards adoption following Re B-S, and that anyone coming forward for an SGO would be preferred over an adopter. This tension was reflected in courts asking LAs to reconsider their recommendation for care and placement orders in favour of SGOs.

*There is a tendency for courts to ask us to reconsider recommendations where we were asking for care orders and placement orders and to reconsider people with a view to making SGOs. Over time in some cases where we might previously have recommended a placement order, this has now changed so we might recommend SGO on the basis that we haven't got a very good reason for dispensing with that particular person (Assistant Director).*

As discussed in the phase one report, this has led to SGOs sometimes being granted to carers who are not members of the extended family and who have no existing

relationship with the child. In this deep-dive investigation, we were given the example of an SGO that was made to a woman (no relation to the child) who sat in the same pew at church as the grandfather whose grandchild was the subject of care proceedings, against the advice of the LA (see phase one report for further information). This was not how SGOs were designed to be used; the order was originally intended for use with children who already have settled relationships with their primary caregivers, whether they are looked after in unrelated or kinship foster care or living with relatives or other adults outside the care system (Wade et al, 2014).

There was a view that social workers and the court need to take a balanced view of what is the most appropriate order for each child. However, some interviewees discussed the tensions within the court arena between the LA, the Cafcass guardian and judges. One manager also expressed concern that there is no follow up with the court regarding how children fare in cases where the court does not follow the LA recommendation, something that research has long advocated (e.g. Farmer and Lutman, 2009).

> *Having to balance between making orders [SGOs] when it is appropriate but not having a 'family at all costs mentality', which I think is there in the courts at the moment, and making wholly inappropriate orders. The consequences for that child are long-term and can be extremely damaging (Manager).*

> *They don't always agree - a lot of weight is put on the guardian's view - historically they have been keen on family placements so they are usually supportive [of SGO]. If the LA assessment concludes the family can't protect and the guardian disagrees that's a contested hearing. Sometimes the court is presented with a stark three-way argument - between parents, guardian and LA - sometimes it goes in favour and sometimes it doesn't (Lawyer).*

The most contentious cases are when the LA is not supportive of an SGO being made. However, one LA discussed how they have tried to overcome potential conflict by addressing points of contention at an earlier stage.

> *In cases where the LA wants an SGO it's less contentious. In cases where the LA have already carried out an assessment and ruled out potential SGO carers and guardians think it could be a viable option with more support or where there are gaps in assessment- that causes conflict (Cafcass manager).*

## Local practice example

> *[Points of contention]- we try to address it at an earlier stage before we get into the court arena - we have discussions with social workers, managers and IROs - the focus is to resolve any issues with a support plan before we are in court to prevent further delay (Cafcass manager).*

The impact of recent judgments was a theme running through the interviews, not only Re B, Re B-S and Re R, but also the more recent judgment in Re A. One Manager expressed the view that the court is making reactive decisions because they are worried about cases being taken to the Court of Appeal. The impact of recent judgments was also being felt in terms of the increase in the number of applications to revoke placement orders in two of the local authorities, as discussed in the phase one report.

> *Darlington judgment [Re A] - we have issued guidance regarding factors that go towards threshold, making sure the issues we are looking at relate to harm for a child as opposed to moral judgments (Lawyer).*

> *Everything [has been] turned on its head this week in court by new case law [reference to Re A] - courts are not making placement orders because there have been so many revocations of placement orders, so the court's in an absolute spin this week… [there have been] a couple of cases this week where we had a clear indication of placement order on Monday and by Friday the judge said he needs to read this case law so won't make a decision until next week (Manager).*

Although there is a perception amongst some that courts are now starting to take a more balanced view towards adoption following Re R, decision-making can be driven by specifics and individuals working in local court contexts.

> *There are two clever barristers who are really causing difficulty for judges - they tend to give in quite a lot ... It depends on who is representing parents. [Judges] cave in to barristers, but won't lose the [timing of the] final hearing (Cafcass manager).*

The intention of the PLO is that FGC and connected person options are prioritised in pre-proceedings and that all kinship/connected persons assessment must be filed by the Case Management Hearing or by week 20 at the latest (Fottrell and Horsley 2013). However, a number of our interviewees said that local judges tend not to have a final cut-off point for when prospective carers can come forward during proceedings, and in some cases allow it right up to the final hearing because of their concern about the case being appealed. This is particularly the case if the alternative is adoption. One manager discussed how she had raised the cut-off point issue at the local FJB performance group.

> *At the initial hearing the judge makes a direction that parents need to provide contact details of family members to be assessed within 14 days - in reality if a family member comes forward on the first day of the final hearing, the final hearing will be adjourned. Because of legislation that the child should be raised within their family if possible, it's very difficult to argue against unless the person coming forward is clearly unsuitable (Lawyer).*

> *I have raised it [cut-off point] many times in the performance group - it says quite clearly on the case management form that failure to put forward a carer at an early*

*stage could result in them not being assessed. It's a general disclaimer but in practice it has no weight at all. It's free rein at the moment - can put forward a relative at any point. Judges are very reluctant to have a cut-off point. It's back to B-S argument, having given parent every opportunity - there is anxiety for judges about being appealed on the basis of having cut-off point (Manager).*

However, not all courts allow family members to come forward late in proceedings.

*If it's at IRH (Issue Resolution Hearing) they may say it's too late - it's usually at CMH (Case Management Hearing) at the latest, but it's not consistent (Cafcass manager).*

*The court is helpful if they think relatives are being presented at the last minute just to derail LA plan - there have been instances when the court has been prepared to say they are not going to consider any more of this (Assistant Director).*

## 2.4 Issues and challenges around SGOs

Special Guardianship envisages a continuing connection between children and members of their birth family as the legal link between the child and his/her birth parents are not severed by the order. Wade et al (2014) found that children in their study had a high level of regular contact with a range of relatives. Although this can be a positive outcome for children, it can also be challenging for both children and their guardians.

One of the main challenges associated with SGOs, which was identified by many professionals in this deep-dive, is around the relationships and contact with the child's birth

parents. This issue was also raised by Wade and colleagues, who noted that the relationship between the child, the guardian and the child's birth parents was the most frequently reported difficulty for guardians (Wade et al, 2014).

*Contact is a real problem - undermining by birth family of a family arrangement should not be underestimated (Manager).*

*Adoption is a better permanent solution for many because of contact issues - contact issues are a major consideration within the family - it needs a strong relative to challenge parents over parental responsibility (Assistant Director).*

There may be heightened tensions for special guardians who are grandparents because of their dual loyalty to their own child (the child's parent) and their grandchild. One interviewee gave an example of a grandparent who was faced with the dilemma of her own daughter, who was homeless and sleeping rough in very cold conditions, needing shelter in the same house as the child.  As well as challenges around contact with the

parents, professionals also discussed potential challenges for special guardians when there are family gatherings or celebrations.

Another issue identified by many was the lack of clarity about how SGOs should be used. This was also reflected in Wade's research, which found that LAs were using a range of approaches to Special Guardianship, which were rooted in different perspectives about the purpose of SGOs (Wade et al, 2014).

> *There is a lot of greyness in SGOs - I have a vision of what they are - everyone has a different vision of how they should be used - with case laws over the past few years - it's become unwieldy, there is no clear criteria for them anymore (Cafcass manager).*

> *Government has left it all too open to interpretation - guidance or regulations are not clear enough for LAs (Manager).*

Some interviewees noted that legal aid restrictions mean that potential carers may not have legal representation when making an application to be a special guardian. However, some LAs discussed helping them to pay the issue fee and assisting them with making an application.

There was much discussion around the challenges of identifying, assessing and supporting special guardians. These are discussed in the following chapters.

# 3. Identifying extended family members

## 3.1 Family group conference

Pre-proceedings statutory guidance states that wider family members should be 'identified and involved as early as possible in supporting the child and helping parents address identified problems' (Department for Education, 2014a, paragraph 2.22). The guidance also encourages the use of family group conferences (FGCs) if there is a possibility that the child may not be able to remain with their parents.

As discussed previously, professionals are more pro-active than previously in seeking extended family members as alternative carers for children who may not be able to remain with their parents, either through FGC or other processes. FGC was valued by many informants as a means of finding out who can offer support if children are unable to remain with their parents or alternatively, who can look after them in the longer term.

Professionals discussed the importance of holding an FGC and identifying family members early in the process.

As soon as you know you might be looking at starting care proceedings, children are not likely to stay within the birth family - you may still be doing assessments but have reservations - we make a referral to FGC to convene it and do it for us (Manager).

To get it right in the court arena you need to get it right at the first referral, first assessment - you need to engage with the family as soon as you do the single assessment - you should know then who the significant people are (Cafcass manager).

The increased investment in FGC as a means for the early identification of family members to care for the child and as a way of enabling families to find their own solutions was also noted by Wade et al (2014). Because FGC is designed to be family led and is convened by specialists who are independent of children's social care, families often see it as less threatening and more inclusive.

Some LAs have recognised that they are not starting the FGC process early enough and are taking steps to remedy this by convening them before the formal pre-proceedings stage. In some cases, family meetings[4] are being held rather than FGCs because of difficulties getting family members together. Although some parents may refuse to attend an FGC, this was not seen as a particular barrier for one Assistant Director:

> *We know FGC is really important - we need to get people to think about them sooner - we have started a process mapping exercise … FGC and viability*

[4] Family meetings are led by social workers and focus on risks, rather than being led by family members to plan and make decisions for a child who is at risk

*assessments are all starting really late - we are thinking about how to flag up sooner at the single assessment - you need to have family and friends list created at this stage. Families are more likely to engage at the single assessment stage (Manager).*

*When I worked in [LA] there was a principle that it doesn't matter if parents attend FGC or not - it's for the child not the parents - there is no reason FGC can't go ahead regardless of whether parents want them or not (Assistant Director).*

In one LA, the FGC coordinator does weekly visits to children's social care and does FGC surgeries to answer social workers' queries about how to approach the FGC. The following provides an example of local practice from one LA.

### Local practice example

*We have FGC early. We, look at genograms so we are not relying on parents' recommendations alone. In pre-proceedings it can be difficult if parents are not giving consent to share information to relatives, but you can still make enquiries. Relatives may decline in the pre-proceedings stage for many reasons - they may feel it is inappropriate at that stage or not understand the potential support that could be available to them - but we advise social workers to keep contact with relatives who may be reluctant at pre-proceedings to follow up again once we are into proceedings, because it's a different situation. [We take a] proactive approach - consider this to be the main factor in having more SGOs out of care proceedings (Lawyer).*

## 3.2 Challenges in identifying extended family members

One of the main barriers to identifying extended family members early in the process is that parents are often reluctant to put forward family members as alternative carers until care proceedings have been initiated and it is unlikely that the child will be able to remain with them.  A number of reasons were suggested for this:

- parents believe that by putting forward alternative carers they are ruling themselves out of caring for the child
- parents do not realise the seriousness of their situation and avoid telling family members what is happening
- family members do not want to put themselves forward until the parents have been ruled out as they do not want to cause conflict within the family
- it is a tactical delay to give parents longer to change.

*As soon as we get a referral we try to get as much information as we can about the child and the wider family network - it may take time as sometimes the family is not interested in communicating with us. It's only when we get into the court process - the seriousness and impact of what the possibility could be if the child is removed - there are suddenly other people popping out of the woodwork (Assistant Director).*

Putting forward family members late in the process has implications for social workers who have to undertake assessments in short timescales to meet the timeframe for the revised PLO. This is discussed further in the chapter 4.

The issue is not just about identifying family members, but also about prioritising those that are most likely to be able to meet the child's needs. One LA described a leaflet that they have introduced to help with this.

## Local practice example

*We try to get the family to do some work to prioritise them - sometimes with some families you might have a whole range of prospective carers, but given that there is not a lot of time to do assessments, rejecting some and keeping some becomes a very time consuming process. So to try and rationalise that we have introduced a leaflet that we use in FGC. It has two purposes - one is to give an explanation of the difference between adoption, SGO, foster care etc; the second - is to say what our expectations would be for someone taking on the care of a child throughout their minority. We point out that it's not something that they are stepping forward to do just for today, but for the next 15-16 years (Assistant Director)*

Although the approach described above helps in identifying prospective carers, it does not always work in prioritisation. One reason proposed for this is that there may be carers on both the maternal and paternal sides of the family competing for the care of the child. The Assistant Director also noted that when applications from family members have failed, other family members may come forward 'at the 11th hour', so that proceedings may not meet the PLO timescales. This view was reflected by many others:

*Families are often at war with one another - as soon as you rule out families they put forward another family. I thought the court protocol would stop this - in court we've done everything we can and then another family member pops up and we're instructed by the court to do an assessment (Manager).*

# 4. Assessment of potential special guardians

Local authorities must provide the court with a report that evaluates the background and suitability of potential special guardians before an SGO can be made. This should be accompanied by a support plan where the LA proposes to provide support services. The expected period for completion of these complex tasks is 13 weeks after the carer's notification (Department for Education and Skills, 2005; Wade et al, 2014).

## 4.1 Key features of assessments

LAs differed in their approach to assessing prospective special guardians. In some cases the assessments were done by the LA kinship/adoption/fostering team, while in others they were commissioned externally (see Wade et al, 2014 for a discussion on specialist versus non-specialist models of service). The most frequent process for assessment was a viability assessment followed by a full assessment if this was positive. However, one LA used a suitability assessment, followed by a viability assessment then a full assessment if each of these were positive, while another LA used a single assessment. Not everyone was in favour of viability assessments.

> *'The decision is to be accepted or not, there isn't sufficient exploration of how we could make it work. It's a blunt tool - I'm not a great fan of viability assessments.' (Manager).*

### Local practice example

> *We used to do routine screening assessment then fuller assessment - we scrapped that in favour of being more rigorous about which family members we assessed and then only having one assessment as it used to be a time delay by one person doing one assessment and then passing on to another person to do another one - it means that you haven't got the problem where a person that was ruled out then comes and asks for a full assessment. The single assessment is working well (Assistant Director).*

Some eventual special guardians are initially approved as foster carers before becoming special guardians. This can be advantageous as it can enable them to receive support from the LA and acquire the skills they may need when they become special guardians.

> *The majority of children will have been placed under fostering regulations first - often there is removal from the family and the children are placed with extended family members, then during proceedings the outcome is an SGO (Manager).*

> *The special guardian assessment is the same as and as thorough as regulation 24 [fostering] assessment (Manager).*

Most of the LAs were using, or were starting to use, Signs of Safety as part of their assessments. One manager also discussed using adult attachment interviews.

We are using Signs of Safety - it's useful if you've got a number of possible carers so it's good in mapping out what the concerns are and what needs to change for a positive assessment.  Adult attachment interviews - there is a lot of work around

resilience in the assessment, also looking at attachment and child development with carers, not just now but in the future as well (Manager).

Professionals consider a range of factors when assessing potential SGO carers, regardless of whether the proposed special guardian has an established relationship with the child or not. At the heart of their assessments and decisions is the:

- quality of the relationship between the child and the carer
- parenting capacity
- commitment to care for the child throughout their minority
- ability to safeguard the child and to withstand the pressures put upon them by the parents.

*[The factors take into consideration] - the relationship the person has with the child - sometimes they don't have a relationship but we look at parenting capacity, strengths, commitment, experiences of parenting other children, what the parents think about the arrangement - if parents are very opposed they are likely to sabotage the arrangement - we need to know whether they are able to withstand that pressure. We look at the needs of the child and balance that with the capacity of carers (Manager).*

*[Assessment of risk re: parents] - It's a significant consideration in assessment - viability assessment requires the proposed special guardian's understanding of risk posed by parents and how they might manage that. If they are indicating a limited understanding or capacity to manage we would do work to move them on. In [LA] people genuinely want these placements to be successful and will put the work in to the assessments and support packages (Manager).*

There was an understanding amongst some that although special guardians might not be perfect parents, they might be good enough. There was a tension in this view, however, with some interviewees expressing the view that the children have similar needs to children who are adopted or in foster care, and that they need 'better than good enough' parenting.

*What we tend to find from the judiciary is that their expectations are lower for special guardians - as long as this family member who if an SGO was made we wouldn't then be issuing care proceedings, that's good enough. For social workers,*

*that level of good enough is not good enough - these are damaged children and placing a child with a family member and immediately going onto a child protection plan is unappetising for them. Our standards are that if a child would not be subject to another child protection plan then we'll give due consideration - for judges it is whether we issue care proceedings. There is a discrepancy between the two (Lawyer).*

## 4.2 Challenges in undertaking assessments

One of the main challenges for social workers is the number of assessments they need to complete and the timescales in which to do so. As in Wade et al's (2014) research, professionals we spoke with felt that there was insufficient time within the 26-week timeframe for in-depth coverage, reflection and analysis. Some informants compared the

time taken to complete an assessment for a prospective adopter or foster carer with that for a prospective special guardian.

*There is a conflict in terms of SGOs between the impetus to speed up proceedings and the time necessary to consider whether someone can offer a child a home for life. The target for prospective adopters is to go through the assessment process over a 6 month period - the lead in to that is thinking on their part, then the process itself and then consideration of matching - it's 9 months to a year at least before a child is placed with them. In care proceedings the target is 26 weeks to identify who prospective carers might be, then assessments that then need to be submitted to court - it's a very small window to consider those people, what they have to offer (Assistant Director).*

Meeting the 26-week timeframe for assessing prospective special guardians is a particular problem when family members come forward late in proceedings, and can negatively affect the quality of assessments. Some LAs said they were reaching crisis point in terms of having the capacity to complete assessments. One LA was commissioning assessments externally, but had grave concerns about the quality of these, while another LA was seconding additional staff to do the assessments.

*26 weeks is a problem to get assessments done within court timescales, especially if they are identified at a later time. It's possible to do a good assessment if they are there right from the start, but if they are identified late there are problems in the court accepting the assessment; the quality of assessments is easy to diminish as you are racing against the 26-week deadline (Cafcass manager).*

Interviewees also expressed concerns around the unrealistic timescales they were being given by the court to complete assessments. This does not leave space for social workers to be analytical and to reflect on the assessment which can lead to poor

decision-making that may not be in the best interest of the child, a view also expressed by Wade et al (2014).

> *The biggest challenge is the timescale; it's a completely unrealistic timescale from the court to complete assessments - sometimes in 4-6 weeks. It's more about meeting court timescales than it is about the child - can't do assessment in that timescale - medicals etc don't come back very quickly. It's also about giving social workers the time to think things through and go through the process - there could be a danger that people are being railroaded into making decisions too quickly - you need space and time to reflect and think whether they can do it and whether it's in the child's best interest. They are pushing us too much, it's not child-focused, its target-focused (Manager).*

The timeframe for completing assessments is complicated by the fact that potential carers may live overseas. This creates a challenge not only in terms of the time and resources needed to travel overseas and do the assessment, but is also a cause of concern for some professionals because of cultural differences and not knowing 'what you are returning children to'.

However, not all LAs see international assessments as an obstacle. Some informants talked about working in a different way to avoid delay. This involved financing families to come over

for the LA to do the assessment and to enable contact with the child. The LA view this positively as it is a short and intensive process to enable social workers to reach a decision.

It is not just international assessments that can be a challenge; professionals also discussed the challenge of doing assessments of carers in other parts of the UK, including Ireland and Scotland, which are a long distance away. The lack of co-operation between LAs was discussed by a few interviewees, as was the legislation in different parts of the UK.

We had one case in Scotland - someone was put forward for the care of three nieces - There were two different sets of legislation, solicitors in Scotland didn't know what we were talking about - I had to fly there 3 times (Manager).

LAs do not necessarily rule out extended family members who have no established relationship with the child, and in some cases such placements can be a positive outcome for a child. However, the assessment for those without an existing relationship is more complex and requires more time. In some cases where there is uncertainty about the placement they may have a connected person's fostering arrangement for a period of time before an application for an SGO is made, a finding also noted by Wade et al (2014).

*Assessments take longer as you have to do a  period of introductions, supervised contact, try and build up rapport between the child and carer before even looking at whether this is the right placement for the child. To some extent it's the same as them being in foster care as they have never met the family members before, they don't know anything about them and it can be quite scary so we need to manage that in a way that gives the children the opportunity to get to know these individuals first (Manager).*

*It gives families that time to settle then they can go back to revoke the care order and replace with SGO, it works quite well. When there is a care order they continue to get support from the LA. Often at the end of care proceedings parents are all over the place and very angry, don't accept what is happening - if we walk away at that point it leaves the special guardian to deal with the aftermath (Manager).*

Challenges in determining the threshold for a positive assessment were also discussed by a number of informants. Some thought that the threshold for approving special guardians has been lowered following Re B-S, and that this is leading to SGOs that might be inappropriate for the child. Professionals discussed this in relation to the lack of guidance regarding the assessment of special guardians.

*We are still struggling with what is the baseline for people who we are undertaking an assessment of. In terms of thinking about prospective adopters and foster carers there is a very clear baseline about what is good enough parenting. In terms of adoption you look at what people are bringing to the lives of children and their future. There has been a difficulty in finding the right pitch for assessments of those who want SGOs (Assistant Director).*

There is no well thought out model of how to do this - you gather lots of info, some relevant some not - you need to think through whether it is different to fostering or adoption assessment which has plenty of time - this has a quick turnover. What model could we use here - we need to turn a 6 month assessment for fostering or adoption into a 6 week assessment (Manager).

The President of the Family Division also comments in Re R that there is a sense that the threshold for consideration of potential carers has been downgraded and is now ‘worryingly low’, but that it is 'founded on myths and misconceptions' (43).

## 4.3 Overcoming the barriers to assessment

Interviewees suggested a number of changes that they are making, or that could be made, to improve the assessment process. The Local Family Justice Board (LFJB) is a key forum for raising concerns and for finding ways to mitigate the challenges.

## Local practice example

*The LFJB is focussing on issues around assessments of connected persons for SGOs - agreement that judiciary, court staff, LA and lawyers all want to have a one day seminar to look at the issues - some of it is about scheduling and timing, also what is the basic expectation we should have about SGO carers going forwards (Assistant Director).*

## Local practice example

*The LFJB has been influential - we've started to look at performance..... What learning can we pull across from good LA processes? We use it to train and support colleagues who are having difficulties - it's about quality of practice and trying to pool that learning across and setting up training groups rather than having them as one offs like before (Cafcass manager).*

The importance of having a positive approach and looking at the ways in which the SGO could be supported to make it work was highlighted by a number of informants.

*One reason LAs rule out SGO carers is because of historical concerns (drug and alcohol problems) - there is an assumption they can't care for child this time round - you need to look at the current capacity and what has changed. The other reason is age and health, they are ruled out - if they are very frail then that's different. It's about thinking outside the box - they may not be able to do everything with the child, but they may be able to get support from other family members - you need to think holistically, possibly about sharing the care rather than focussing on one person - need to explore those options (Cafcass manager).*

Another suggestion proposed was to ensure that assessments of prospective carers are not rushed, and that placing the child in foster care for a period is not a bad thing if it enables a more thorough assessment to be done to ensure that it is the right option for the child. One interviewee wondered whether technology such as Skype could be used for initial assessments when prospective guardians live a long distance away and would welcome some advice and guidance on this.

In one LA, the social worker and Cafcass guardian sometimes worked together to expedite the assessment process.

## Local practice example

*We've had 2-3 cases where the social worker and guardian did the assessment together. Family member came forward late and it was approved by the court that they would see the family together - it speeds up the process. There have also been cases where an independent social worker had concerns on the quality of*

*the assessment and the social worker and guardian have gone to address the concerns together (Cafcass guardian).*

# 5. Support provided to special guardians

Local authorities have a duty to make provision for post-order support services for special guardians. They must assess the needs of foster carers who become special guardians, if requested to do so, but for other applicants, all provision is discretionary (Wade et al, 2014).

## 5.1 Types of support

Professionals we spoke with discussed a range of support that the LA may provide to special guardians, including:

- financial
- practical (e.g. beds, supplies for the children)
- help with housing issues
- support around relationships with birth parents and contact
- support with life story work
- therapeutic support
- education support

*[The type of support] varies according to the needs of the family. There is a lot around contact- escorting, mediating, occasionally supervising contact, relationships - trying to improve the relationship between the special guardian and the birth family, support with life story work. We go into schools - children have the same issues and more as children placed for adoption around their history and the ongoing relationship with birth mum - we have discussions around managing children with attachment issues and how to support them (Manager).*

*[Type of support?] - financial, practical, signposting to other services, therapy, offer of life story book work with the special guardian and the child - it depends very much on individual needs. There is a standard support plan for all, with links to universal services (Manager).*

In the six LAs that were part of this study, the support plan is generally drawn up by the social worker who does the special guardian assessment. One LA does a support plan before they go to court, even if the assessment is negative, as this has been requested by the court. Providing the court with a detailed support plan, even where no services are required, was a key recommendation in Wade's study.

The main type of support discussed was financial, but informants also noted that this is means tested. Although they did not give a specific example, one interviewee discussed this as a potential barrier for some, for example where grandparents might have savings for their retirement and would not get financial support to help with being a special guardian.

Special guardians differ in the support they want or need and in some cases do not want any involvement from children's social care. Interviewees in one LA discussed the yearly newsletter they produce so that special guardians can stay in touch with children's social care and also have access to workshops and training. They also felt that this was helpful in keeping the door open for special guardians to return at a later stage if their support needs change. The importance of LAs maintaining contact with carers and 'keeping the door open'

for them to come back and get support at a later time was also noted by Wade et al (2014). Where the support needs are greater, special guardians may have an allocated worker.

Although some of the LAs run special guardian support groups, none offered dedicated preparation groups. However, in one LA special guardians could attend the kinship and foster carer preparation group. LAs said that it was not feasible to provide dedicated special guardian preparation groups as special guardians take on their role in an unplanned way, unlike adopters and foster carers, so it is difficult to plan for when they might be needed. This is especially the case in smaller LAs that have fewer SGOs.

Some interviewees reported an increase in the number of SGOs being made with a supervision order, often when there is uncertainty about the placement and there is a need to ensure that support is provided. In Wade's (2014) study, one-in-nine SGOs were made with a supervision order attached.

> *[SGO with a supervision order are] more borderline cases, or where we have opposed SGO, or parents pose a particular risk and a supervision order provides particular support for the special guardian to help them around contact (Lawyer).*

> *There has been an increase [in supervision orders with SGO], where guardians and the court have worries about how the SGO will be supported or in cases where the relationships have not been tested or there is poor relationship between the LA and SGO carer, around contact and the SGO support package (Cafcass manager).*

Some thought that, if an SGO is made, it is inappropriate to attach a supervision order, and that a child arrangement order with a supervision order would be more suitable as this enables more support to be put in place and there is more oversight of the placement.

*My view is that SGO with a supervision order is not appropriate so we don't do it. If you need a supervision order then it's more appropriate to have a child arrangement order and supervision order - if it works well after year, then they can apply for an SGO (Lawyer).*

*There was one borderline assessment - we looked at whether or not SGO was the right order or whether we should apply for a child arrangement order - it wasn't about whether it was the right placement for child, but about whether or not it was the right order to meet the needs of that child. [Circumstances you would recommend child arrangement order rather than SGO?] - If the connected person's assessment failed and there are some concerns whether the SGO assessment would also be unsuccessful. In this case it was all about the grandmother and her own children being under child protection plans ... we knew it was unlikely that the SGO assessment would be positive, but we also knew that for the young person placed with grandmother that the risk factors were different. We had to balance out what was in the best interest of the child, which was to remain with grandmother - the child wanted that - and balance that with whether the court would grant the order because of the grandmother's history. A child arrangement order enables more support to be put in place and more oversight of placement (Manager).* [5]

---

[5] We sought guidance on these comments from associates with legal expertise. Rachel Cook sent some interpretation/clarification, which I have summarised here:

The obligations in relation to assessments and support services including financial support differ for CAOs and SGOs. For CAO an allowance is discretionary. For SGO there is an obligation for an LA to make arrangements for the provision within their area of special guardianship support services. Under S.14 F (3) - if requested an LA may carry out an assessment of a person's needs for special guardianship support services. If LA decides to provide any special guardianship services - LA must prepare a plan and keep the plan under review (S.14 F(6) CA 1989).

Paperwork and reports.

CAO: May or may not need an S.7 report. There is potential for CAFCASS to be the author of S.7 report particularly if involvement of the LA has been minimal. SGO: "The court may not make a special guardianship order unless it has received a report dealing with matters ....". S.14 A(11). Although a Court can make an SGO of its own motion i.e even if no application has been made (S.14A(6)(b) CA 1989) I think the Court will nearly always want to see some form of a report from an LA.

SGO: Gives the dominant or exclusive PR to the special guardians. CAO: PR is shared. SO: places a statutory duty on the LA to advise, assist and befriend the supervised child (S.35 CA 1989). An SO has elements of support and monitoring of the child which must encompass the carers. Perhaps in its supportive role it may be seen to bolster both an SGO and CAO - hence the confusion.

If an SO is being requested and granted by the Court because an element of monitoring is required then there may be an argument that to hand over dominant or exclusive PR to the special guardians (by way of an SGO) is premature. So the use of SO allows LA to monitor (and support) for a year and then decide, at the end of the SO, how things are going and whether appropriate to support special guardians acquiring exclusive PR by virtue of an SGO.

## 5.2 Barriers to providing support

There was a general consensus that the level of support provided to special guardians is poor, and that special guardians should be entitled to the same, if not greater, levels of support that are provided to adopters and foster carers. This view was also expressed by Wade and colleagues, and more recently by the British Association for Adoption and Fostering[6].

There was a general consensus that without support there is a risk of SGO placements breaking down.

> *I believe that special guardian cases need much more support than adoption cases because the assessment process for adopters is really rigorous - they have to be more than good enough, they have to be cracking to be approved - you get really motivated adoptive parents, they have gone to classes, courses, training - the children placed may have difficulties but they have a high level of motivation and will seek support. In a family placement - there is a feeling that we will sort it out ourselves, there is less admission of the type of support needed to meet the child's needs (Lawyer).*

> *SGO carers should be supported in the same way as post-adoption support - there should be a post-adoption service for SGOs. If there is no support, placement breakdown will increase (Cafcass manager).*

One of the main challenges for LAs in providing support is financial resources and the lack of consistency between LAs. Professionals spoke of the need for LAs to be transparent about what they can and cannot provide. They acknowledged that there is only so much support that they are able to provide within their resources and that signposting to other services was essential.

> *When looking at preparing the SGO support plan - there is financial provision and there may be support around contact, but in terms of practical support in the community, it's a matter of signposting to universal services, referrals to CAMHS etc. (Lawyer).*

---

Like us, Rachel was unsure what the interviewee meant by: "A CAO enables more support to be put in place and more oversight of placement". Arguably an SGO offers more support by virtue of the support services. It is likely these comments relate to the specific case. Pre-PLO this may have been a case where LA asked for a time limited Residence Order to Grandmother and some Interim Supervision Orders to see how things went. Grandmother not "pass" a fostering assessment etc so could not ask for ICOs. Not want grandmother to have SGO at this stage. Rachel's interpretation is that the Manager in this quote has a sense that CAO will be temporary, and if Granny is okay, then ask for Order to be made up to an SGO with an exclusive PR and fading away of the LA.

[6] http://www.cypnow.co.uk/cyp/news/1151144/charity-urges-extension-of-adoption-support-to-special-guardians

*LAs are skint - it's difficult for social workers as they have done a good assessment, know what the child needs; they go to panel and they say no. Then they go to court, have that debate back and forward - it's a finance issue rather than assessment issue (Cafcass manager).*

*The whole issue of allowances and support plans - it throws up a lot of inconsistency between Las - we need to standardise these (Manager).*

The concern around the financial pressures on LAs was also highlighted by Wade and colleagues; they found that financial pressure was leading some LAs to review and restructure their financial support packages.

One suggestion for overcoming the barriers around support is that there should be stronger regulations around support for special guardians.

## Changes needed around support

*It's appalling - there is no formal requirement for us to provide additional support ... [Government] need to build into regulations the same expectations of public bodies as they do with adoption and looked after children - first choice school, access to CAMHS, access to a pot of money they can pull down for specific help for their children. When children are placed on an SGO in another authority there should be a legal requirement of the LA placing the child to inform the host LA and for there to be formal consideration of services that might be required so that an assessment process should be undertaken at that point (Assistant Director).*

Interviewees discussed the specific problems in providing support when special guardians live in another LA. This issue was also noted by Wade et al (2014), not only in relation to concerns expressed by LA professionals, but also from special guardians who were anxious about whether they could get the help they need when they do not live near the LA in which the child previously lived. This is also an issue at the end of the three year period when the responsibility of providing support passes to the LA in which the special guardian lives.

*It's a challenge for us to practically support someone living in another part of the country. Other LAs are very reluctant to take on any support of families living in their area until the 3 years have elapsed. LAs are not interested in supporting families; they are not in a position to allocate workers to them. It becomes difficult to access local services as you don't know what services are in other parts of the country and you don't have those professional relationships (Manager).*

*At the end of 3 years you say to another LA they are your responsibility, but they may not offer all the services offered from the original LA - there is no obligation to offer that support. Most LAs would do another assessment to see if they need*

*support - families find that frustrating and some families reach crisis point because there has been a break in support (Manager).*

## 5.3 SGO outcomes

The following factors were identified by interviewees as enabling an SGO placement to be a successful outcome for the child:

- there has been a long-term relationship/bond between the child and the carer
- the carer understands the child's needs and there is a good match between the child and the carer
- the carer is committed to caring for the child throughout their minority and they understand that they are not just looking after the child until the parents get better
- the carer is aware that their primary responsibility is the safeguarding and welfare of the child
- the carer is able to manage complex contact arrangements (with support if necessary)
- the carer has a good support network.

The strength of the bond between the child and their carer and whether or not the child had lived with the guardian before the SGO was made were both independently associated with later placement stability in Wade's study. The authors suggest that making SGOs quickly, before relationships have been properly tested may carry some future risk and that a period of time in which these relationships can be tested before moving to a final Order is to be recommended (Wade et al, 2014: 234).

Many professionals discussed the complexity of contact for special guardian families, particularly where relationships are not amicable. In Wade's study, tensions were greatest where parents had difficulty accepting the placement or where they tried to manipulate the feelings of children (Wade et al, 2014). Interviewees in this deep-dive investigation

discussed how a lack of provision of support from LAs for complex contact arrangements could lead to SGOs breaking down.

*We are seeing an increased number of SGO breakdowns - they are breaking down as they are not getting support for the child or the relationship between the child's parents and SGO carer not going well and the LA does not support this (Cafcass manager).*

*In special guardianship arrangements parents can be undermining and unsupportive but still have high levels of contact - it's damaging to the child's sense of permanence and the guardian. The impact of parents is huge on placement (Manager).*

In some cases, parents are going back to court to try to change contact arrangements, which can be very upsetting for special guardians.

*Frequently special guardians are being taken back to court by parents to change contact arrangements - it's very distressful and puts foster carers off going for special guardianship. ..... The whole idea of an SGO is that it is a permanent order but often we are seeing them coming back and being challenged. We are saying to families thinking about an SGO that it isn't as watertight as first envisaged because of the possibility of parents coming back - they need to be aware of that before taking it on as it is hugely stressful (Manager).*

Guardians in Wade's study expressed similar concerns around parents potentially applying to have their children back if they turned their lives around, and the potential of this to damage already fragile relationships (Wade et al, 2014).

Professionals who gave examples of cases where SGOs had broken down often talked about them being cases that had been assessed as borderline, but where the carers had been given the benefit of the doubt. Another recurring theme was the pressure on the special guardian and their family because of the needs of the child.

*'What kinds of cases break down? - they tend to be cases where there has been a borderline or negative assessment of a family member, particularly where children have significant behavioural issues - that is why assessments look at whether they can care for this particular child, rather than a child.' (Lawyer).*

'Two occurred within days - one for a young child and they phoned the LA within 4 days as they couldn't cope - the child was accommodated under s20. In the other case, they changed their mind before the SGO was granted.

*‘[Reasons for SGO breakdown] - pressure from the family, another - we had safeguarding concerns. They hadn't thought through the implications - they often want to help the parents, but it’s a lot to take on.' (Manager).*

Although SGOs, like adoptions, do break down, it should be noted, that estimates of placement disruption for looked after children moving to Special Guardianship is relatively low at just under six per cent over five years post-SGO (Wade et al, 2014). This is consistent with other research which estimated a breakdown rate over 5 years of 5.7 per cent for SGOs, compared to 0.72 per cent for adoption, and 14.7 per cent for residence orders (now known as Child Arrangement Orders) (Selwyn and Masson, 2014).

# 6. Conclusion

This study provides an in-depth analysis of LA and Cafcass professionals' views regarding the use of SGOs following the family justice reforms and recent court judgments, with a focus on cases for SGOs granted for children on the edge of care or as a result of care proceedings. It is important to note that, although this deep-dive investigation focuses on the use of SGOs in the current context (ipso facto post-family justice reform), we must be careful not to draw erroneous causal links between SGO practice challenges and the reforms or recent judicial decisions. Many of the issues discussed by the professionals in this deep-dive are evident in recently published substantial and methodologically sound research studies (e.g. Wade et al, 2014; Selwyn and Masson, 2014). These same issues are also noted by Robert Tapsfield, who has been investigating the use of SGOs in four London authorities[7].

## 6.1 Key findings

- There is a perception that there has been an increase in the number of SGOs being made, in part as a result of the family justice reforms, but also as a result of recent case law.

- Social workers are pro-active in the early identification of extended family members. Practice in this area needs to continue to build - to ensure sufficient engagement with wider family at the earliest stages. Although LAs are using FGC, this is often not happening soon enough and family members are often not identified before proceedings. These issues are raising challenges in proceedings. ‘Evidence such as ‘the parents’ refusal to nominate any connected person’ is unlikely to discharge the duty that reasonable efforts to be made by the local authority to identify connected persons’ (Fottrell and Horsley 2013: 13).

- Family members often come forward as potential special guardians during proceedings, once the court has decided that the child cannot remain with their parents. Many courts do not have a cut-off point for when family members can come forward during proceedings.

- There is a concern amongst some regarding SGOs being used for babies and infants and a feeling that this contradicts the original intention of SGOs being used for older children in long-term foster care or with an established relationship with the carer.

[7] While not in a position to share the report, Robert Tapsfield was kind enough to share his thoughts on themes emerging from that work.

- There is a tension between the view of the court and social workers with regard to the degree to which carers can offer long-term care for the child and what constitutes 'good enough' parenting. This may lead to the court disagreeing with LAs' recommendations for a placement order when there is a negative assessment of the prospective special guardian.

- There are challenges in completing assessments of special guardians within the court timescales, especially if carers come forward late in proceedings. Interviewees expressed their concern about the rigour of assessments and the support provided to special guardians, in particular in comparison to the assessment process and support services for adopters and foster carers, whose children have similar needs.

- In addition to the deep dive information, a RiP associate who works as an independent social worker added these comments: Assessment of special guardians must include assessment of 'capacity to protect'; a full parenting capacity assessment and risk assessment in relation to birth parents to support analysis of risk factors re continued contact etc.

- Family dynamics are often complex and can be challenging for special guardians. It relates not only to formal contact with birth parents, but also to carers' dual loyalty towards both the child and the child's parent. LAs can provide support with formal contact in the short-term, but not over the longer term. Without adequate support, SGOs that are fragile or in crisis are liable to break down.

- LAs have adapted their practice to improve practice in relation to identifying, assessing and supporting special guardians. Examples include providing leaflets; explaining the different types of orders; using a single assessment to assess special guardians; social workers and guardians working together to do assessments during proceedings;  using the LFJB as a forum for raising issues and holding joint training sessions and seminars.

## 6.2 Messages for policy and practice

Many of the issues explored in this deep-dive investigation have deep roots and have been identified in earlier more robust research (e.g. Wade et al, 2014). It is important to focus on these issues in the context of the development of SGOs since 2005, otherwise we will be in danger of misunderstanding if we focus too narrowly on a post-reform/post-Re B S analysis.

- Government should consider providing further guidance on Special Guardianship to create greater consistency in the practice of LAs.  There is a real need to build practice knowledge, which requires quite distinct approaches from those required in supporting adoption. Adoption is a process for which LAs have experience, and

in which the authority is able to exercise more control (matching, support etc). SGOs are, by their nature, a type of placement without the formal boundaries that go with adoption. As such they require different skill sets for practice in a complex extended family context.

- Swifter decisions are being made to meet the 26-week timeframe for care proceedings and orders are sometimes being granted before a child or young person has moved in with a guardian. This was not what was intended by SGOs[8]. Where the child has not yet lived with their potential guardian, or where the relationship is not yet established as strong, the LA and court should consider a period in which these relationships can be tested before moving to an SGO.

- Special guardians are often poorly served in terms of good quality information and support. The children and young people involved are often emerging from longstanding and complex family difficulties and special guardians need information and support in order to navigate the challenges that may arise to avert avoidable breakdowns and the instability and trauma that may result for the child. Local authorities should provide detailed written support plans, agreed in advance with guardians and their representatives, as part of the court bundle. There should also be co-operation between LAs in providing support when special guardians do not live in the LA from which the SGO was made. All this needs to be adequately resourced in the same way as adoption and fostering support.

- Special guardians are not entitled to legal aid, although some LAs offer funding to support an application, and may not have any legal advice in the course of proceedings. This leaves special guardians emerging from proceedings with legal responsibility but often very little understanding of what has occurred and what it means for them.

- There are substantial issues regarding the assessment of potential special guardians, in particular with regard to viability assessments. There is also a tension between the necessity to do good quality assessments and the timing to complete these to be compliant with the PLO timescales. Although there is flexibility within the PLO to extend the timescale, some courts are reluctant to do so. There are several areas that need to be addressed:

[8] Statutory guidance on SGOs states that an application can be made by an existing guardian; anyone holding a residence order or with consent from those who have one; anyone with whom the child has lived for three out of the past five years; or a relative or local authority foster carer with whom the child has lived for at least one year or who has the consent of the local authority to apply (Department for Education, 2004).

    - The child's timeframe and best interests should always take priority over compliance with the PLO. The LFJB have a key role to play in developing a common approach to this within the court arena and in sharing best practice to achieve this.

    - Regulations should specify what assessments (including viability assessments) should cover. There is a need for these to be supported by more detailed practice guidance, taking account of the different contexts in which special guardianship applications arise.

    - There is a need for further development and sharing of assessment formats to deliver high quality assessments within the timescales available.

- The LFJB is key in providing a forum for joint discussions and training between court officials and LAs to develop a shared understanding of the complexity of working with families, in particular with regard to the identification and assessment of extended family members. Consideration should be given to developing joint protocols regarding the final point at which family members can come forward as prospective carers during care proceedings. This should also include a protocol for when family members come forward late in proceedings where there are exceptional circumstances.

- The LFJB also has a key role to play in helping to resolve the tension between the perspective of some courts and LAs of the degree to which potential special guardians can offer long-term care for the child and what constitutes 'good enough parenting'. Whilst the court might consider the adequacy of the arrangement at the time of care proceedings, social workers are likely to consider the needs of the child through to maturity and the carer's potential ability to meet those needs over the longer term. The LFJB has a key role to play in exploring and helping to resolve any such tensions to best meet the best interests of the child in both the short and longer term.

# References


Bentley, P (2014) 'Continuing Conflicts in Adoption Law and Policy'. Seen and Heard, Vol 24: 3, 26-34

Department for Education and Skills (2005) Special Guardianship guidance: Children Act 1989: The Special Guardianship regulations 2005. London: Department for Education and Skills.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236264/special_guardianship_guidance.pdf

Department for Education (2014a) Statistical First Release: Children looked after in England (including adoption and care leavers) year ending 31 March 2014. London: Department for Education

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/359277/SFR36_2014_Text.pdf

Department for Education (2014b) Statutory Guidance on Court orders and pre-proceedings. London: Department for Education
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/306282/Statutory_guidance_on_court_orders_and_pre-proceedings.pdf

Farmer, E. and Lutman, E. (2009) Case Management and Outcomes for Neglected Children Returned to their Parents: A Five Year Follow-up Study. Report to the Department for Children, Schools and Families: University of Bristol.

Fottrell D and Horsley N. Understanding Proportionality in the context of Adoption and Care Planning after Re B and Re BS. London: Coram Chambers. Accessed May 2015

National Adoption Leadership Board (2014) Impact of Court Judgments on Adoption. What the judgments do and do not say.

http://www.first4adoption.org.uk/wp-content/uploads/2014/11/ALB-Impact-of-Court-Judgments-on-Adoption-November-2014.pdf

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

Re B (A Child) [2013] UKSC 33

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

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

Selwyn, J. and Masson, J.M. (2014), 'Adoption, special guardianship and residence orders: a comparison of disruption rates' Family Law Journal, vol 44, pp. 1709-1714.,

http://www.familylaw.co.uk/news_and_comment/adoption-special-guardianship-and-residence-orders-a-comparison-of-disruption-rates

Department for Education



**Reference: DFE- RR478B**

**ISBN: 978-1-78105-501-4**

This research was commissioned under the under the 2010 to 2015 Conservative and Liberal Democrat coalition government. As a result the content may not reflect current Government policy.The views expressed in this report are the authors' and do not necessarily reflect those of the Department for Education.

Any enquiries regarding this publication should be sent to us at: Patrick.TOWGOOD@education.gsi.gov.uk or www.education.gov.uk/contactus

This document is available for download at www.gov.uk/government/publications