

A national study of the usage of supervision orders and special guardianship over time (2007-2016)

Briefing paper no 1: Special guardianship orders

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Introduction and background

This is the first in a series of briefing papers on findings from a national study of supervision and special guardianship orders funded by the Nuffield Foundation (May 2015 - July 2017). This first report focuses on national and regional trends in the use of special guardianship orders over the period April 2007 to March 2015 and compares patterns with other legal permanency options for children. The focus is on children within public law proceedings, who are subject to proceedings because of significant harm.

The present study takes place against a background of concerns about special guardianship orders that have culminated in a review by the DfE (Department for Education 2015). It has been suggested that special guardianship orders may be usurping the role of adoption. Here the Re B and Re B-S judgments in 2013 have been linked to a sharp drop in placement orders (Department for Education 2014, National Adoption Leadership Board 2014). There have been further concerns that a special guardianship order with an unconnected person that ends when the child turns 18 does not provide “the life-long, legally permanent family” that adoption ensures (National Adoption Leadership Board 2014).

The possibility that special guardianship orders are being used in different ways from their original legislative purpose has been accompanied by other practice and policy concerns. All are exacerbated by the lack of recent robust national information on the overall numbers of children subject to special guardianship orders and their characteristics, together with a lack of up-to-date reliable evidence about trends over time. These data gaps are particularly important in the light of the major changes to the legislation in 2014. For the first time a statutory time limit² to children’s proceedings has been introduced to counter delay in decision-making within the court process (Children and Families Act 2014).

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² Within 26 weeks unless “the court considers that the extension is necessary to enable the court to resolve the proceedings justly”.

Special guardianship orders were introduced in the Adoption and Children Act 2002 as a private law route to legal permanence for children unable to live with their birth parents. This new type of order was intended to complement adoption and originally envisaged as a legal option for older³ children who had a pre-existing relationship with a relative, long term foster carer or family friend, or where adoption was unsuitable for religious or cultural reasons (Department for Education and Skills 2005). When a special guardianship order is made, the child ceases to be looked after by the local authority. Earlier research reviews have commented favourably about special guardianship orders (Wade et al. 2014) but have noted that disruption rates, although low, were higher than adoption (Selwyn et al. 2014). They have also identified obstacles to its uptake, and concerns over levels of support and the quality of practice (Bowyer et al. 2015, Ranshaw et al. 2015, Wade et al. 2014).

The main reason for the 2015 DfE review is to establish how far special guardianship orders today are fulfilling their objectives and providing safe and sustainable legal permanency that promotes child wellbeing for the duration of childhood.

Aims

National trends can be of help in confirming or challenging practice evidence. The present research provides an independent picture of how special guardianship orders are being used today. It is the first study to be carried out on these issues since the comprehensive report by Wade et al. (2014).

How was the study carried out?

The data is solely derived from the Cafcass database⁴, which provides an exceptional electronic holding of public and private law applications and orders dating back to 2007. The study draws on and adapts the methodology developed in a related study of recurrent care proceedings by some of the team members (Broadhurst et al. 2014), also funded by the Nuffield Foundation. The key difference is that in the present study the **child's case**⁵ is the unit of measurement (rather than the mother's application as in the recurrent care proceedings study). This focus is essential in order to track individual orders and outcomes per child.

The inclusion criteria were as follows:-

- at least one child was included in the set of proceedings

³ The definition of an older child is not specified in the regulations.

⁴ The Cafcass database comprises the Case Management System (CMS, 2007 to July 2014) and Electronic Case Management System (ECMS, from July 2014).

⁵ A child's case was defined as a set of proceedings. All applications and legal orders within a set of proceedings for a child are aggregated. Two siblings in the same case would count as two unique records. A child with two different sets of proceedings (e.g. a care application and placement application in different cases) would also count as two unique records. The figures produced by this methodology may be different from those produced by other sources or by using different units of measurement.

- the case included at least one S31 (care or supervision) or placement application, and
- the start date of the first application in a set of child proceedings was during the research timeframe (1/04/2007 - 31/03/2015)⁶

The decision to include only cases with at least one S31 care/supervision or placement application ensured that the study focused exclusively on cases involving a risk of, or actual significant harm. Private law applications for a special guardianship order and residence/child arrangements applications were excluded unless they were linked to an application for a public law order.

Six legal orders were selected for the analysis. They were placement, care, supervision, order of no order, special guardianship and residence/child arrangements. All were concerned with facilitating legal permanency.

Placement applications and orders were tracked instead of adoption applications and orders for two reasons. First, unlike adoption, Cafcass is always involved in a placement application or order, thereby ensuring that the records are likely to be complete. Second, placement applications and orders capture the latest trends and are therefore a better barometer of any changes in practice than adoption where there is always a time lag before final orders are made.

The strengths of the Cafcass database are twofold. It provides access to the total population under study and the records are likely to be complete for data on which Cafcass collects information. The limitations are the relative paucity of national data on child profiling beyond age and gender⁷.

The sample

The sample comprised 130,293 sets of public law child proceedings issued between 1/04/2007 and 31/03/2015. Over this time period, 88.5% (N=115,348) of these cases were completed. Legal order data was available on 90.7% (N=104,618) of the completed cases.

These applications were brought for a slightly higher proportion of boys (51.6%, N=67,147) than girls (48.4%, N=63,101)⁸. Children aged under 5 years made up over half of the sample (under-ones: 28.5%, N=36,758; 1-4 years: 29.3%, N=37,785). Five to nine year olds accounted for 23.3% (N=29,970) of the applications. Children aged 10 years and older comprised the smallest proportion (18.8%, N=24,241; 0.8%, N=1,039 were aged 16-17 years)⁹.

⁶ Records were extracted regardless of whether a legal order had been recorded to capture the total volume of cases during the observational window.

⁷ Cafcass now collects data on ethnicity.

⁸ All percentages are calculated from known records (i.e. missing data was excluded from the analyses). Data on child gender was missing in 45 records.

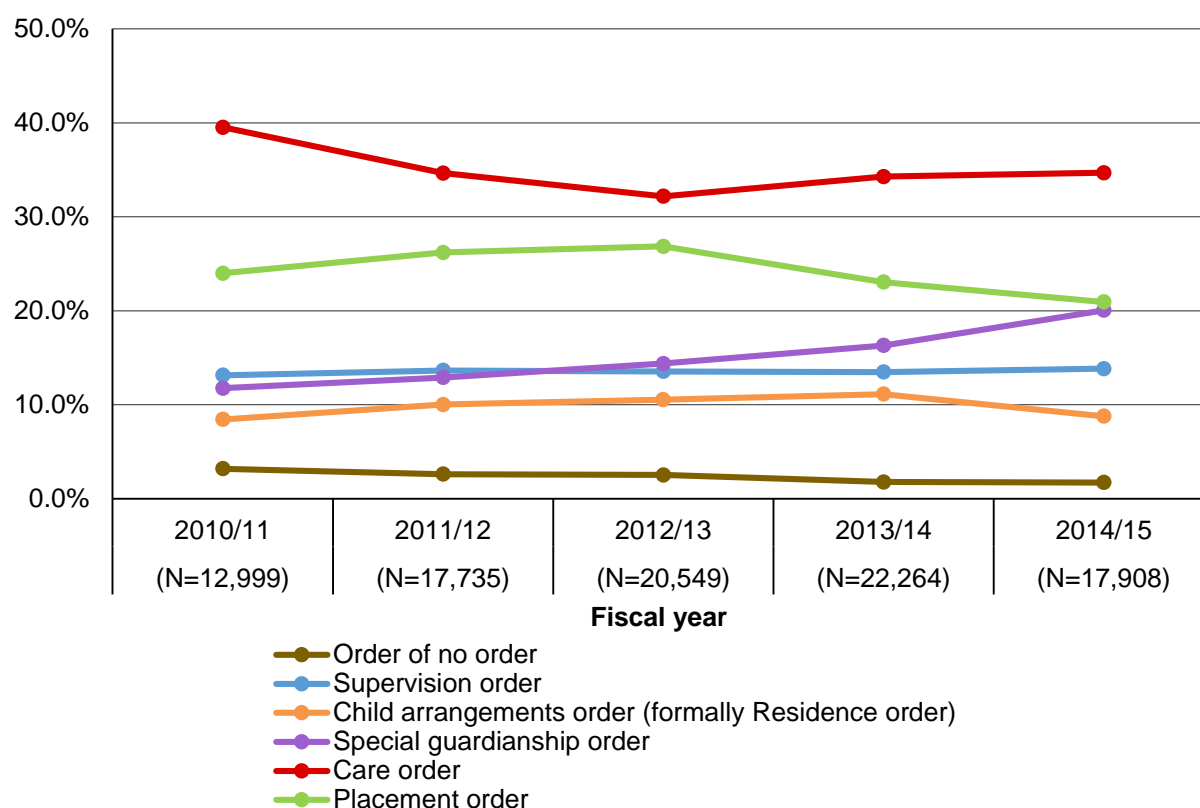
⁹ Data on child age was missing in 1,539 records.

What we found – the highlights

About the national trends

- There has been a steady rise in the number and proportion¹⁰ of special guardianship orders resulting from public law proceedings since 2007/08.
- There has been a marked change in the ratio of usage of special guardianship orders since 2012/13 when compared to placement order trends. The proportion of placement orders has declined as the share of special guardianship orders has risen*¹¹. In 2014/15 for the first time ever, the proportion of special guardianship and placement orders (20.1% v 20.9%) and the numbers (3,591 v 3,749) are converging.
- A new and growing trend is the use of a supervision order made to the local authority to accompany a special guardianship order. In 2014/15 28.7% of special guardianship orders were accompanied by a supervision order, up from 11.2% in 2010/11*. But usage of supervision orders as a standalone option compared to other legal orders has remained almost level (e.g. 13.1% in 2010/11 and 13.8% in 2014/15).

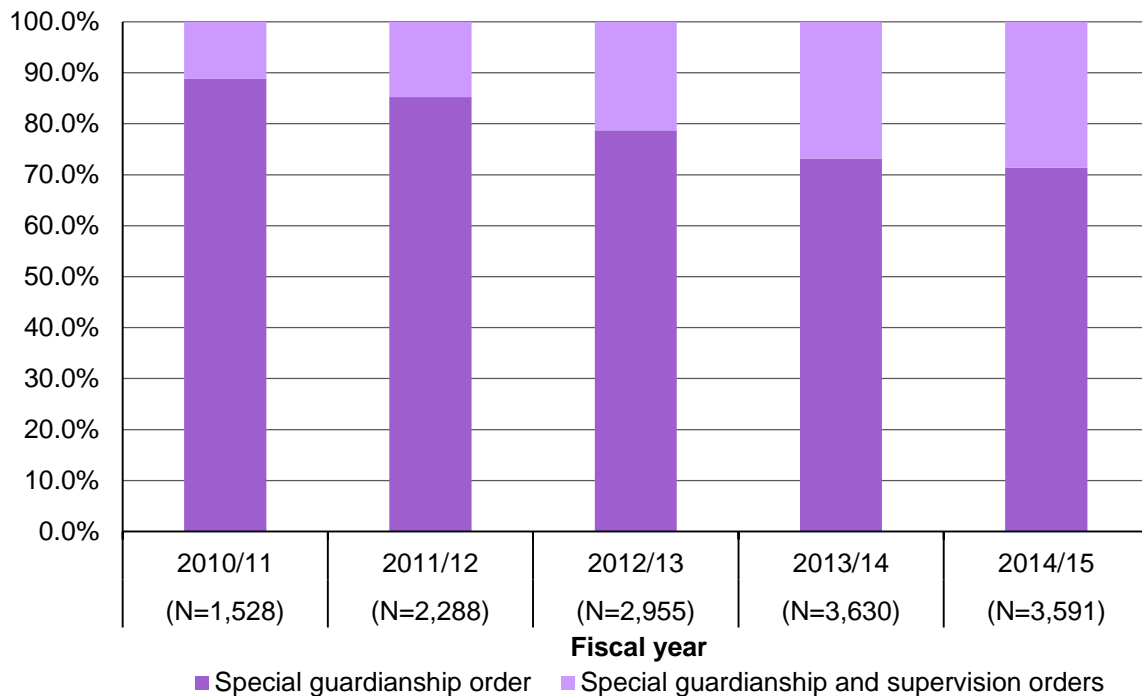
Graph 1:- Legal orders made between 2010/11 and 2014/15 (the ratio of use)



¹⁰ The proportion of usage (ratio of use) of all six legal order types made in any given year sums to 100%. For example, 39.5% of all orders made in 2010/11 were care orders.

¹¹ In this briefing paper, * denotes statistical significance ($p < 0.001$). Chi-Squared Tests were used to compare categorical data and Mann-Whitney U-Tests were used to compare continuous data. These tests account for different group sizes.

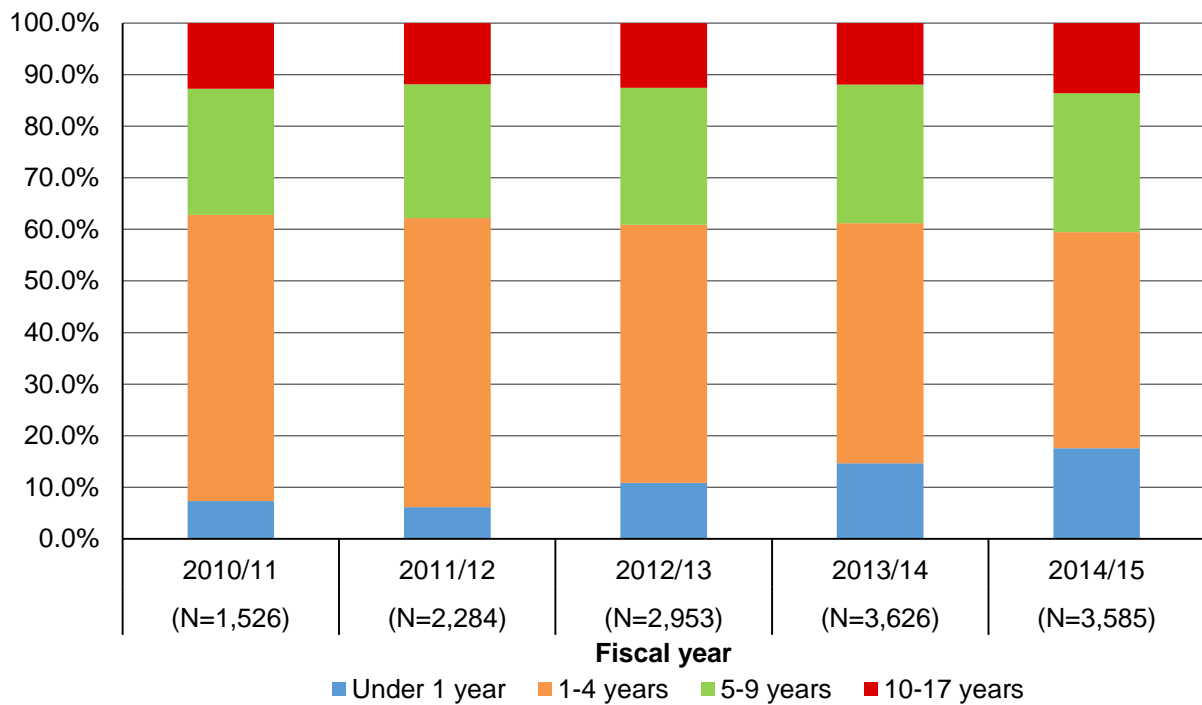
Graph 2:- The use of supervision orders when making special guardianship orders (2010/11-2014/15)



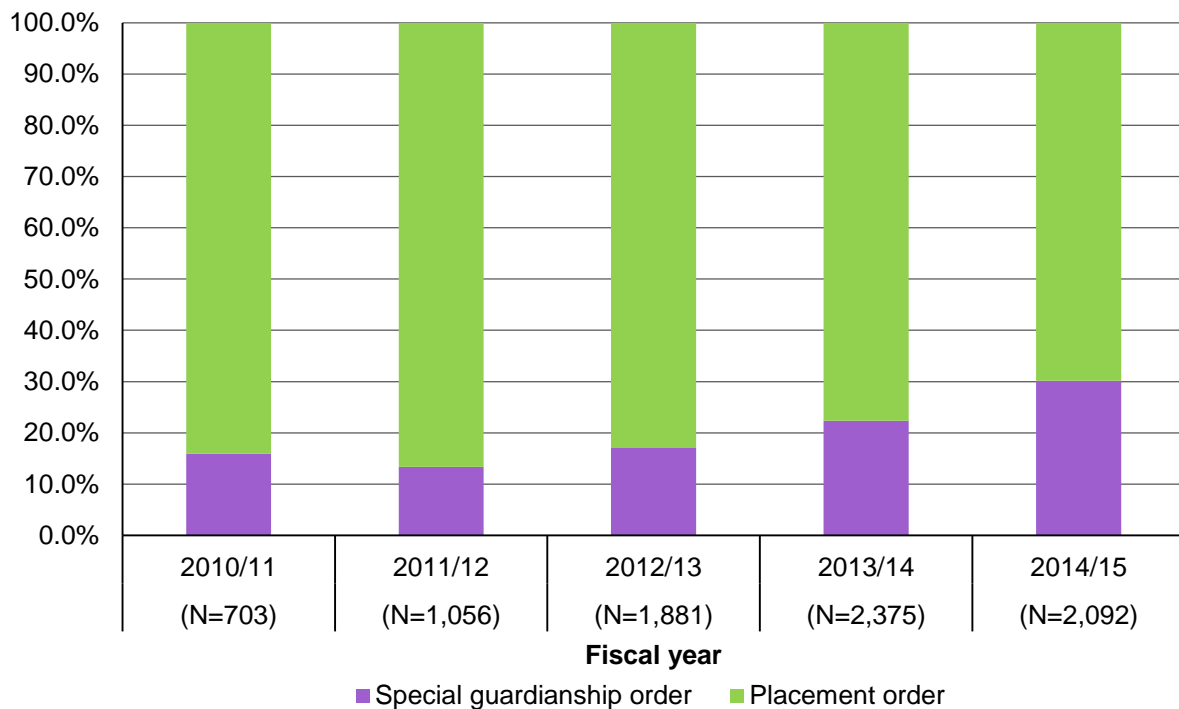
About the child’s age profile

- A new trend is that the age profile of children on special guardianship orders is changing. The proportion of infants under-one has increased, particularly in the last three years*.
- However, special guardianship orders continue to be used for the full age spectrum. Between 2010/11 and 2014/15 children under five years of age comprised approximately 60% special guardianship orders, children aged 5-9 years account for about a quarter, and the remainder are older children (10-17 years).
- In each of the last three years, supervision orders attached to special guardianship orders are less likely to be used for infants under-one than for children above that age*.
- A comparison between special guardianship and placement orders for infants under-one shows that proportional use of special guardianship has steadily increased (see graph 4). From 2012/13 onwards there has been a shift away from placement orders towards using special guardianship orders for children aged less than one year*.

Graph 3:- The age profile of children subject to a special guardianship order (2010/11-2014/15)



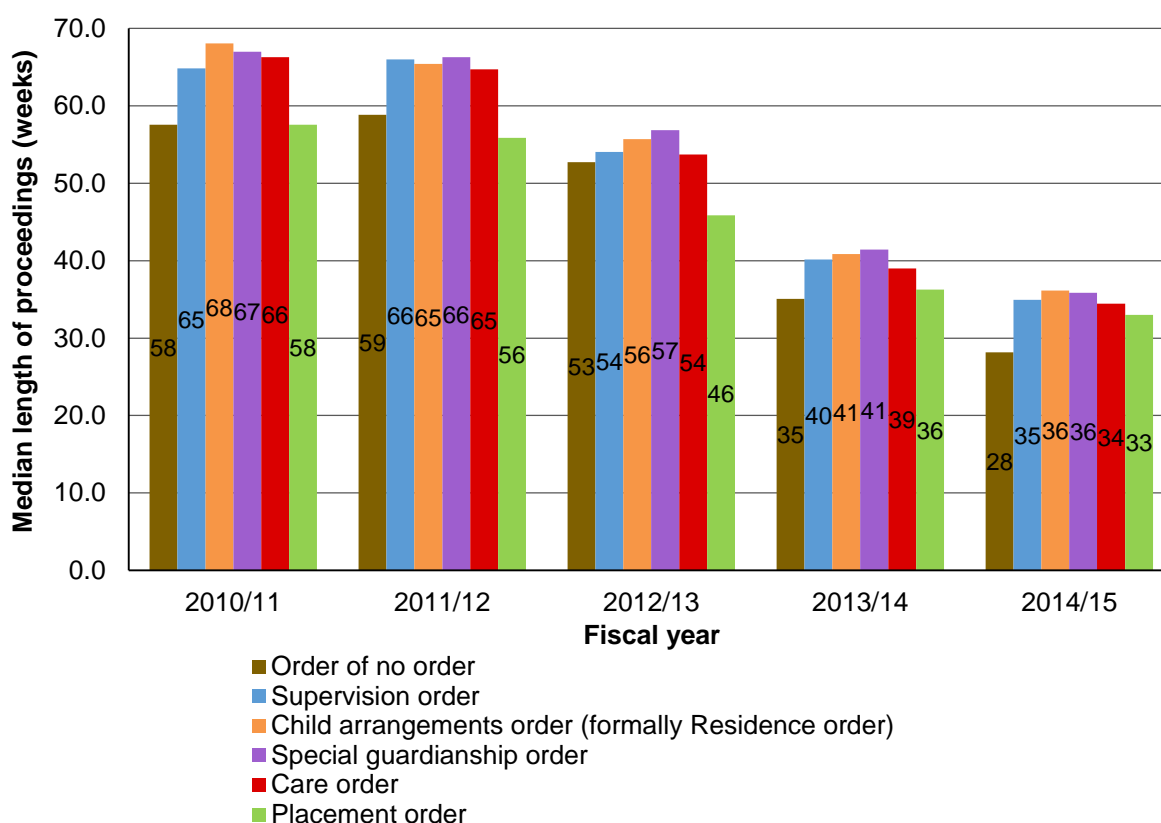
Graph 4:- The use of special guardianship and placement orders for infants under-one (2010/11-2014/15)



About the length of proceedings

- The median length of proceedings, irrespective of application or order type, almost halved between 2010/11 and 2014/15. Applications resulting in a special guardianship order are in line with this trend. However they generally take longer to complete than placement orders*.

Graph 5:- The length of proceedings (2010/11-2014/15)



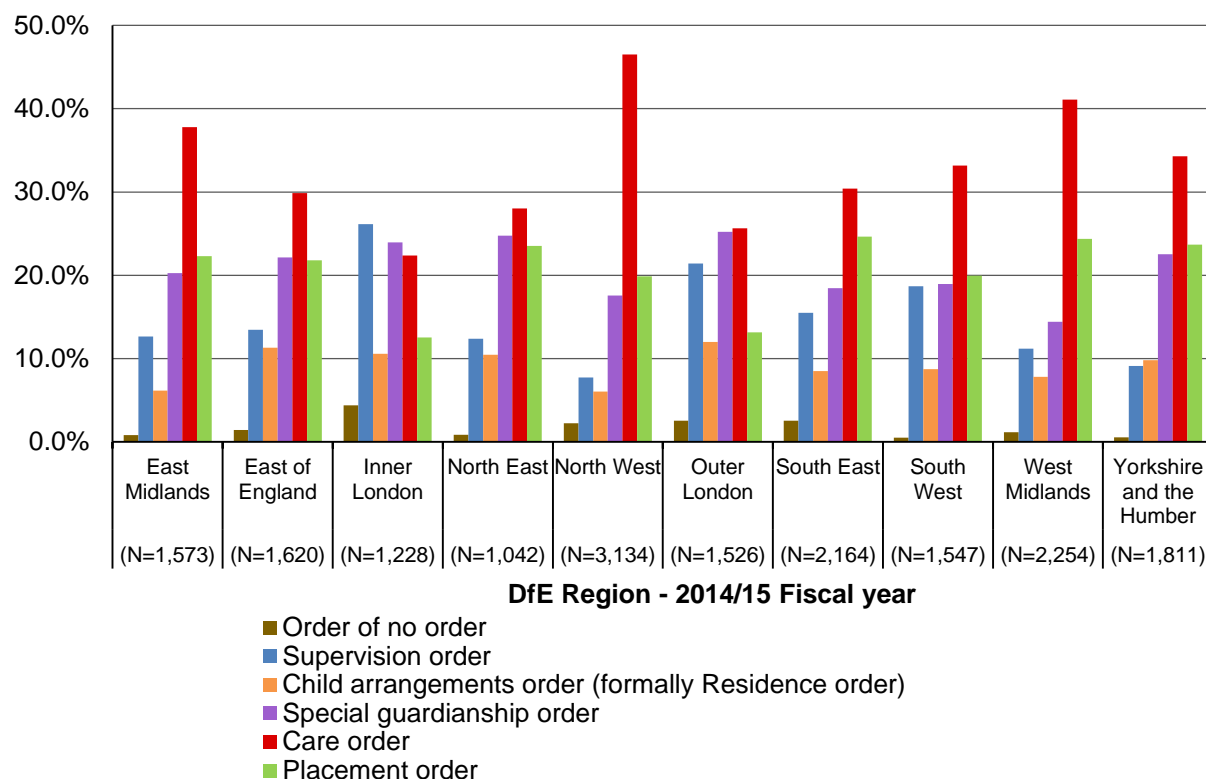
About the regional picture

- There are marked regional variations¹² in the ratio of use of all order types including special guardianship*. In 2014/15 regional variation for special guardianship orders ranged from a low of 14.4% in the West Midlands to a high of 25.2% in outer London. This pattern of low utilisation of special guardianship orders in the West Midlands and high utilisation in outer London has been stable for the past three years. While regional variation for placement orders clustered around 20-25%, lower utilisation was found in inner (12.5%) and outer London (13.2%).
- Regional variations also apply to the ratio of special guardianship orders used in combination with supervision orders*. In 2014/15, the use of an attached supervision order ranged from a low of 20.4% in inner London to a high of

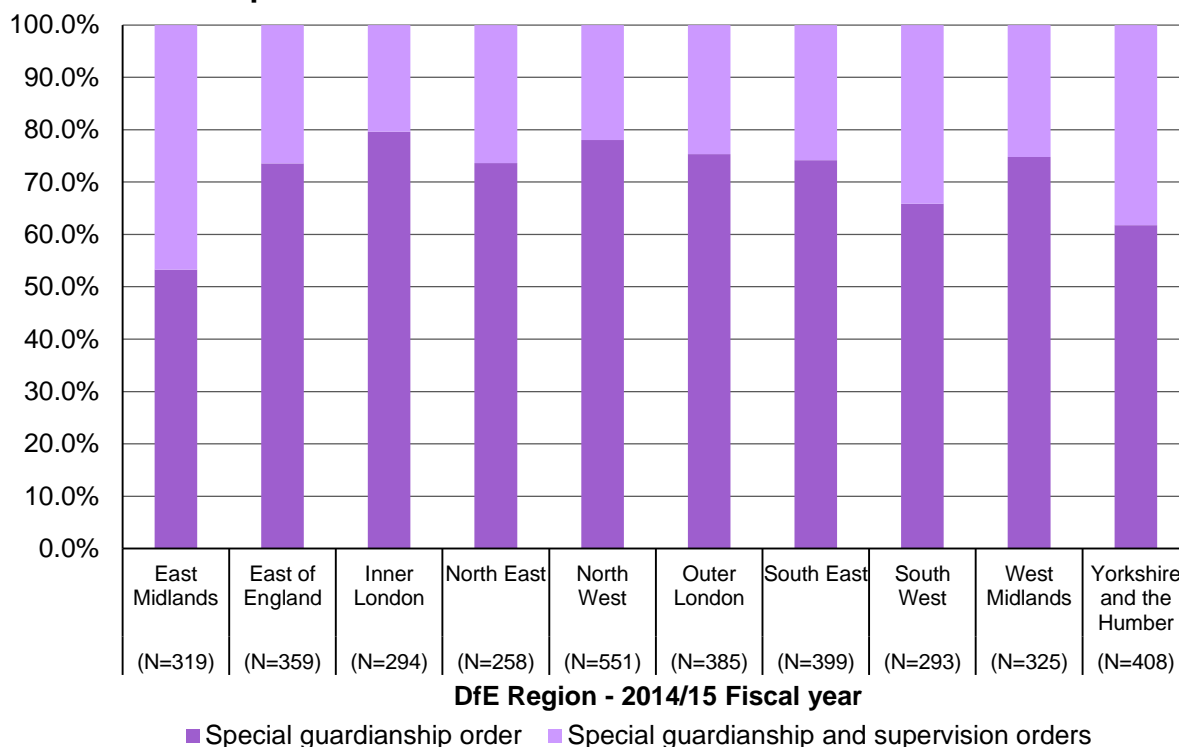
¹² These comparisons between regions are made on 'unadjusted' percentages. They therefore do not take into account any differences that might impact on decision-making such as local resource issues, ethnicity, make-up of households, size of child or care population and local authority performance.

46.7% in the East Midlands. This pattern of low utilisation of attaching supervision orders in inner London was found for the past three years.

Graph 6:- Regional variation in the ratio of use of legal orders in 2014/15



Graph 7:- Regional variation in the use of special guardianship orders made with attached supervision orders in 2014/15



What do these findings tell us?

The results have provided evidence of the growing national importance of special guardianship orders. They are now clearly considered to be an important option in providing legal security for a substantial proportion of all children whose case has been brought to court because of concerns about significant harm.

At the same time the national evidence has revealed departures from the original aims of special guardianship orders. They now play an increasing role when compared directly to placement orders as a route out of public care and they are being used for an increasing proportion of infants aged under-one.

The steady increase in special guardianship orders accompanied by a supervision order is another important new trend. It means that in approximately a third of all cases the local authority is required to 'advise, assist and befriend the supervised child' when a special guardianship order is made. There are practical and resource implications arising from this new trend. But above all it raises the question why a supervision order is necessary and what it can achieve. There is no national evidence on the contribution of supervision orders to child wellbeing in general and supporting special guardianship orders in particular. This trend will need careful monitoring.

These trends however are not uniform. The unadjusted statistics give an indication that regional variations may be substantial in the ratio of use of special guardianship orders, made alone or accompanied by a supervision order, and a similar pattern can be found over time.

The findings raise as many questions as they answer. It is not possible to answer from national data the reasons for the increase in supervision orders that are being made together with a special guardianship order or why they are less likely for infants under-one than older children. Nor is it clear whether the trends can be linked to policy and legislative change or pressures to conclude proceedings quickly as a result of the Children and Families Act 2014. Above all, it is not possible to comment whether these emerging patterns are of concern or simply reflect fresh understanding of an order that is of comparatively recent origin and reaffirmation of the family network.

The central question that needs to be addressed is how far special guardianship orders provide an enduring, loving and stable home for children when this route out of care is chosen. This question can only be addressed by a national longitudinal study that charts children's individual pathways over time to establish the sustainability of special guardianship orders, capture disruption rates and map welfare outcomes. All these questions need to be looked at for special guardianship orders and compared with outcomes for other comparable routes.

The second stage of our study will address these issues and be the subject of a further briefing paper in 2016.

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