

Articles

Adoption, special guardianship and residence orders: a comparison of disruption rates

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There appears to be a conflict of views in relation to adoption between government policy and judicial interpretation and practice. Government policy is promoting the use of adoption for children in care, providing resources for recruitment of prospective adopters and improved support for adoptive families, and continually comparing local authority performance and urging more speedy decisions in adoption. In contrast, since the decisions in *Re B (Care Proceedings: Appeal)* [2013] UKSC 33, [2013] 2 FLR 1075 and *Re B-S (Adoption: Application of s 47(5))* [2013] EWCA Civ 1146, [2014] 1 FLR 1035

the courts have focused more intensively on limiting adoption to children for whom 'nothing else will do', on the reasons given in social work evidence and judgments to justify such plans, and lowering the leave hurdle for parents who wish to have a placement order revoked or to contest an adoption application. In this context, it is valuable to look at the evidence provided by new and innovative research on the durability of adoption, and how this compares with other arrangements for children's care. Of course, research findings cannot determine how an individual case should be decided, what is proportionate and in particular child's best interests. However, decisions in children's cases necessarily involve prediction and risk; research findings can and should inform these judgments.

There have been no national studies which have focused on the disruption of looked after children's placements legally secured by an order intended to provide stability in their lives. Particularly in adoption, research studies have reported the number of placements that disrupted as just one of the outcomes in studies examining adoption outcomes more generally, and mainly considered disruptions that occurred before an adoption order was made. The lack of hard evidence on adoption disruption has resulted in claims being made that adoptions disrupt frequently; the disruption rate has been quoted as ranging between 2% and 50%.

The introduction of special guardianship orders (SGO) in 2005 raised questions about whether, and in what circumstances, SGOs are a more appropriate order (*Re I* [2012] EWCA Civ 1765; *Re W* [2011] EWCA Civ 1362). It is clear from the Department for Education's *Data Pack on Adoption and Special Guardianship* (2012) that some courts and local authorities (LAs) are using SGOs more than adoption orders. However, little is known about the longer term stability of arrangements for previously looked after children whose carers have such an order. Concerns have been expressed to the All-Party Parliamentary Group on Adoption and Fostering (1 April 2008) that SGOs are being used inappropriately for very young children, while others, including Eekelaar, argue that SGOs are as effective at providing permanency for children without the radical intervention of adoption. Residence orders (replaced by child arrangement orders in the Children and Families Act 2014, s 12) have been made in respect of looked after children for many years, but little is known about their stability. It is essential that more is known about disruptions to guide decisions about permanence, and to plan the support that families might need.

Aims and method

To understand more about adoption disruption in England, the Department for Education funded a mixed methods study to examine adoption disruption and to compare the rates of disruption by type of order (adoption, SGO and residence order (RO)). A disruption was defined as, a looked after child who had been subject of an adoption order, SGO or RO and who had become looked after again. Inter-country and step-parent adoptions were excluded. The focus of this article is on the comparison of disruption rates. A full report of the research is available at www.bristol.ac.uk/hadley.

The Department for Education (DfE) supplied national data on all looked after and adopted children for the period 2000–2011. The researchers received information on 37,335 children who had been the subject of an adoption order, 5,912 with a SGO and 5,771 with a RO. These DfE datasets, known as the SSDA903, comprise information provided annually to

the department by local authorities on all looked after children. Information includes ethnicity, date of birth, dates of entry to care, legal changes and number of placements. Each child has a unique identifying number (ID) and a complete care history for each child can be assembled from the data. The datasets have been assessed by the UK Statistics Authority (2013) as being of high quality.

Children with SGOs and ROs who return to care retain their original ID making it possible to identify the disruptions. Of course, if children become looked after in a different local authority from the original placing local authority, they will be allocated a new ID and these cases would not be identified in the dataset. However, previous research suggests that most families who take out these orders tend to remain in the same local authority area.

Adopted children who re-enter care should always be given a new ID number and therefore these children could not be identified in the dataset. To identify the adoption disruptions, every adoption manager in England was contacted and asked to provide information on the children who had returned to care and to provide their original ID so that their care history could be assembled. Data were returned on disruptions by 87% of local authorities.

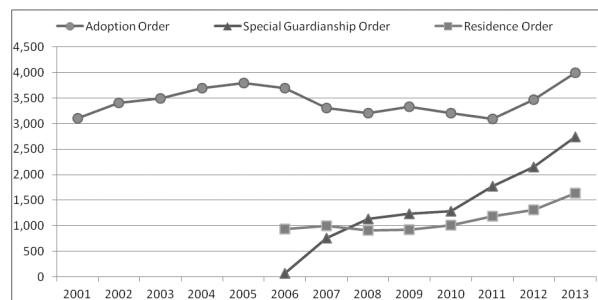
The characteristics of the children on the three types of legal orders were compared. Event history analysis (EHA) was used to estimate and explore disruption rates because a simple reporting of the rates as proportions would have under-estimated the disruptions rates as the children were of different ages and been in placement for different lengths of time. An EHA analysis considers 'time to event' and importantly takes into account those who have experienced the event (disruption) and those who have not. Factors contributing to disruption were also examined using statistical modelling.

Findings

Adoption remains the most frequently used legal order for children who need a permanent substitute family (see Figure 1). The number of SGOs and ROs has increased since 2005. In the year ending

31 March 2013, about 14% of children, who ceased to be looked after, left the care system with an adoption order, 10% left subject to a SGO and 6% on a RO. We expected that with the introduction of SGOs, there would be a corresponding decline in ROs. This has not happened. It can be argued that practice has improved – as more children are leaving the care system than ever before into a placement secured by a legal order, rather than spending their childhoods in care.

Figure 1: Adoption, Special Guardianship and Residence Orders 2001–2013



Differences in the use of the three types of order

There are some limits on the way these orders can be used, and the courts have given guidance in case law. Specifically, adoption orders are rarely made to family members – in family adoption is viewed as distorting legal relationships. Special guardianship orders cannot be granted to parents (Children Act 1989, s 14(2)(b)), and are most frequently used where children are placed with relatives, most commonly grandparents, but are also granted to some unrelated foster carers. There is no restriction granting residence orders but these orders are readily revocable and do not provide rights to assessment for support services. In a recent sample of 30 residence orders made in care proceedings included in Masson et al's study of the pre-proceedings process ([2013] Fam Law 1413), 15 were made to the child's father, nine to the child's mother and six to other relatives. Most fathers who obtained residence orders had not been caring for children when the proceedings started.

Differences in the characteristics of the children on the three orders

Before examining disruption rates it is important to know whether the characteristics of the children on the three orders are similar. There were some striking differences particularly in the children's age at entry to care and speed with which children moved into their final placement. Adopted children were on average the youngest when they started to be looked

after and RO children the oldest: adopted children were on average 14 months old, those on SGOs 3 years 4 months, and on ROs 4 years 5 months. Although adopted children were the youngest at entry to care, they waited longer on average to get into their final placement compared to the children on the other two orders, and had experienced more moves in care. The length of time can partly be explained by the finding that the first placement of SGO and RO children often became their final placement with 69% of SGOs and 39% of ROs made to a family or friends carer. The majority of SGO and RO children were in their final placements within a year of entering care. Put another way, many of the children subject to SGOs or ROs were placed with these carers during (or even before) the care proceedings, and left care when the proceedings ended with a SGO or RO. Delays for adopted children were also associated with the time taken between the decision to plan adoption and the making of the adoption order family. Unlike the other children, 39% of those on ROs had had at least one failed reunification attempt prior to the order being made.

About 15% of the children had been adopted by their previous foster carer. The

proportion of children adopted by former foster carers has barely risen over the last 13 years. Despite the increase in the use of adoption and the policy and practice emphasis on reducing placement moves, few foster carers have adopted children in their care. Instead, unrelated foster carers have used Special Guardianship (31%) and Residence Orders (27%), maintaining the legal connection between children and their birth family. We also found that children who were adopted by their foster carers entered care at a similar age to those placed with stranger adopters. However, whilst the mean age of children was two years old when placed with the foster carers (who later became adopters) there was an average wait of a further two years before the Adoption Order was made. A quarter of the adopting foster families waited more than three years before finalising the arrangement through the courts.

By the time of the order, adopted children were on average 4 years old, those on SGOs 5 years old and children on ROs 6 years old. Averages hide variation. If we look at either ends of the age scale and first the young children under the age of four: 57% of adoption orders, 46% of SGOs, and 42% of ROs were made on these young children. Fewer children (13%) were adopted over the age of 8 years old whereas 29% of SGOs and 32% of ROs were made for children older than 8 years of age. Each of the orders were first analysed individually, comparing the placements that were intact with those that had disrupted.

Adoption disruption

The adoption disruption rate was 3.2% over a 12 years period. Ethnicity and gender were not associated with greater risk of disruption. This finding challenges the view that boys are more difficult to parent. Unlike previous studies, this study found that adoptions by foster carers were just as likely to disrupt compared with children placed with stranger adoptive parents, even when controlling for age.

The most important factors that predicted disruption were the child's age, followed by older age at placement and a longer waiting time between placement and the date of the adoption order. Nearly two thirds of disruptions occurred during

the teenage years and more than five years after the order had been made. This is a new and important finding, since adoption support has focused on providing support services in the first few months and years of an adoptive placement. Whilst support at this initial time point is undoubtedly important, adoption services have been slow to develop for teenagers and for adopters who are parenting teens.

Children who were older at entry to care, who had experienced multiple foster placements, or who had waited longer to be placed with their adoptive families, were more likely to experience disruption. Children who were 4 years old or more at placement were 13 times more likely to leave their adoptive family compared to those who were placed as infants. The detrimental effect of delayed adoption processes could be seen particularly for children who became looked after under the age of four years old: the average length of time between entry to care and the making of the adoption order was 2.9 years for placements that were continuing but had been 4.3 years for those that had disrupted. These findings support much of the previous research and the Government's attempts to reduce delay in decision-making. This much larger dataset highlights the impact of delay. The recent success of the reforms to reduce the length of care proceedings is helping to reduce delay. However, the findings raise concerns about the long-term effect on children of the slow process of appeal and rehearing where decisions to make placement orders are considered to have been inadequately reasoned.

SGO and RO disruption

The SGO disruption rate was 5.6% over a 5-year period and the RO disruption rate was much higher at 25% over a 6 year period. Unlike adoption disruptions, 69% of SGOs and 68% of ROs disruptions occurred when children were younger than 11 years old. Two-thirds of SGOs and ROs disrupted within 2 years of the date of the legal order. Similar to the findings on adoption, these disruptions were not associated with gender or ethnicity but were associated with being older at entry to care, at placement and having experienced

more moves in care. For each move in care the risk of disruption increased nearly 1.5 times.

Orders made to family or friends carers were the most stable, especially when the children had experienced no moves in care. To enable them to care for a looked after child, relatives, friends or other persons who are connected with the child must be approved as foster carers (*Fostering Services (England) Regulations 2011*). However, in an emergency, an immediate placement can be made if it is the most appropriate placement to safeguard and promote the child's welfare, and the placement cannot wait until the full approval process is completed (*Regulations 24 and 25 of the Care Planning Placement and Case Review (England) Regulations 2010*).

Children on SGOs and placed with unrelated guardians were three times more likely to experience a disruption than those placed with kin. SGO disruptions were also more likely if the reason children had become looked after was not abuse or neglect.

The biggest factor contributing to RO disruptions was the child's age at placement, followed by being placed with an unrelated carer and number of moves in care. There was some evidence that children who experienced a RO disruption were more likely to have had two or more attempts at reunification compared with those whose RO placements were intact.

Comparison of all three orders

Before making the comparison, it is important to highlight that disruption rates for all three types of order were low, compared with the high breakdown rates found for neglected children who are re-unified after care proceedings (eg Wade found that about 65% of reunified children returned to care at least once during a 5 year follow-up). The disruption rates were also lower compared to the movement that is reported for children who remain looked after. Sinclair and colleagues in *The Pursuit of Permanence* (2007) estimated that only 19% of the children who remain looked after have been in the same placement for five years or more. Of course, that may be because those who remain in care are the children with the

most challenging behaviours and/or they enter care late as adolescents with entrenched difficulties.

After examining the characteristics of the children on each type of order, the three orders were analysed together in four different ways: (a) selecting only children who were older than 4 years at the time of the order; (b) selecting only orders made to kin; (c) controlling for different ages and length of time to the order; and (d) using only a 5 year follow-up period as the SGO data covered 5 years and the adoption data 12 years. In each of the four different analyses, adoption remained the most stable and residence orders the least stable.

SGO and RO disruptions occurred irrespective of the child's current age. Most disrupted quickly and when children were younger than 11 years old. Unlike adoption disruptions, being a teenager had no statistical effect on the risks of a SGO or RO disruption. Of course, the adolescent years may yet pose additional risks for the SGO and RO placements that continue, but data are not yet available for large numbers of children over such a long time span. Adoptions were far more likely to disrupt during adolescence, which suggests that adoptive parents may have more difficulty negotiating the teenage years, and/or they remain committed to children for longer compared with guardians and carers. Certainly, there was evidence to support both hypotheses in the interview data from the study. The tenacity of adoptive parents was very evident in their accounts of managing very challenging behaviour.

The analysis highlights the negative impact of movement and delay. Both create great instability and stress in children's lives. Placement changes have been shown (independent of a child's problems at entry to care) to be associated with an increase in behaviour problems. Sustained stress is very harmful for children. Children on SGOs and ROs had fewer moves mainly because about half of those on SGOs and a third on ROs were placed initially with a family or friends carer and did not move again – their first placement became the permanent placement. Children on ROs were already carrying many known risks, on average the oldest at entry to care, had the most failed reunification attempts, and were the oldest at the time of the order.

Conclusion

The findings from this study underline the importance of timely decisions for children, particularly where adoption is the plan. They should also dispel misconceptions about the fragile nature of adoption. For the vast majority of children who were adopted, the placement endured; adoptive parents were committed and tenacious, despite experiencing difficulties during their children's teenage years.

When considering whether 'nothing else will do' the courts need to assess the long term prospects of alternative placement arrangements: Can any of these offer the child security throughout their childhood? Foster placements are most unlikely to do so. Rehabilitation to the parent carries a triple risk: re-abuse or further neglect, high rates of breakdown, particularly where rehabilitation has failed before, and the damaging impact of being older and having experienced more placements on

any future arrangement. The relatively high rates of breakdown for residence and special guardianship orders within 2 years of the order being made raise questions about the assessments of carers and the making of orders. Have local authorities and/or the courts been too ready to accept such arrangements? Are the short time frames for the social work assessment of carers (completed in 8–12 weeks) in comparison with the assessment of adoptive parents (6 months of preparation and assessment) resulting in less thorough reports and carers ill prepared for the task ahead? The availability of support for these orders must also be considered. Adoption is the most stable of the three orders for children without suitable friends or family placements. It offers the greatest opportunity for security irrespective of the child's age at placement or at the time of the order.