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Care Arrangements and Permanence: Demystifying what the Courts and Government Expect

Why We Are Where We Are



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- Government has been very pro adoption since Conservative/Liberal Democrat alliance
- Great efforts have been made to tackle delay and drift for children and seek permanence for children

Special Guardianship Orders

- Special Guardianship Orders (SGOs) were introduced under the Children and Adoption Act 2002. They came into force in December 2005 as part of the legislative framework for children who could not live with their parents – a level between a residence order and adoption
- Latest guidance came out in January 2017

Special Guardianship Orders

- SGOs were further designed to address those situations where minority ethnic groups may have cultural and religious difficulties with adoption and where it is decided that adoption is not in that child's best interests.
- Increasing number of unaccompanied asylum-seeking children who may need secure, permanent homes, but may have strong attachments to their families abroad, or not know the whereabouts of their families, or even if they are alive. Adoption may be inappropriate in those cases.

Special Guardianship Orders

- Ongoing debate about whether they fit within public or private law. Contained in the private section of the Children Act 1989 but are much more commonly used at the end of public law cases
- Increasing debate in recent years about their use and/or purported misuse, which has often followed on from court cases and sometimes seemingly contradictory positions taken by the Government and the courts

Timeline of Events(1)

2007 – 740 SGOs made

2012 – Concerns emerging about the misuse of s.20 by local authorities

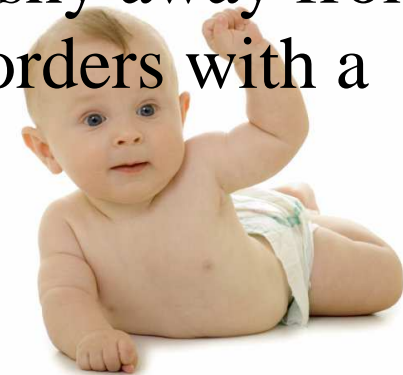
2013 – Adoption rates at highest ever but then 2 appeal cases; re B and re B-S changed the landscape for permanency planning. In both cases the appeal court was seen to be indicating that adoption should be seen as a last resort. This seems to contradict the Government's position on adoption

2014 adoption rates fell by 47% from the previous year



Timeline of Events(2)

President of the Family Division then made great efforts to clarify the situation re adoption. In one ruling stating that “I wish to emphasise, with as much force as possible, that re B-S was not intended to change and has not changed the law. Where adoption is in the child’s best interest, local authorities must not shy away from seeking, nor courts from making, care orders with a plan for adoption”



Timeline of Events(3)

- 25% fall in placement orders granted by the court between 2013/14-2015/16
- 21% fall in decisions to pursue adoption
- 5% increase of children in care in that period
- Leaving care 2015/6 –15% adopted, 12% Special Guardianship Orders, 4% Residence, Child Arrangement Orders



Timeline of Events(4)

- Under the revised Public Law Outline SGOs were cut from 40 to 26 weeks. This led to criticisms that SGOs were being rushed through, without sufficient thought and analysis, which in part led to the Government's review of SGOs in 2015
- The review found a significant minority of cases of concern:



2015 Government Review of SGOs

- Rushed or poor quality assessments
- Potentially risky placements with supervision orders made concurrently with SGOs because there remained some doubt about the special guardian's ability to care for the child long term
- Inadequate support for special guardians, both before and after placement



2015 s.20 Guidance by the President of the Family Division

His concerns were:

- Failure by the local authority to get consent from parents at the outset
- How consent was recorded by local authorities. There is no requirement to record consent but his view was a prudent local authority would want to evidence they had signed consent
- S.20 arrangements continue for too long
- Local authorities' reluctance to return a child when parental consent was withdrawn



2015 s.20 Guidance by the President of the Family Division

Guidance stated:

- Where possible, the agreement of a parent to a s.20 arrangement should be properly recorded in writing and evidenced by the parent's signature. The written document should be clear and precise and drafted in simple and straightforward language that a parent can readily understand.
- The written document should spell out that the parent can "remove the child" from the local authority accommodation "at any time".
- The written document should not seek to impose any fetters of the parent's right to withdraw consent.
- Where the parent is not fluent in English, the written document should be translated into the parent's own language and the parent should sign the foreign language text, adding, in the parent's language, words to the effect that 'I have read this document and I agree to its terms.'



Timeline of Events(5)

2007 – 740 SGOs made

2012 – 437 SGOs had a Supervision Order attached but this increased by 173% to 1,193 in 2014

2014 – 4121 SGOs made

2015 5,300 SGOs made. An increase of 81% from 2011



Timeline of Events(6)

2016 – another Court of Appeal ruling re W. An appeal case against a judge’s decision to reject an adoption application in favour of an SGO. The Court of Appeal made reference to re B. The judges said that social workers had misunderstood the “Nothing else will do” benchmark and that in this case the local authority had failed to consider the impact on the child’s welfare, given she had lived with the adopters for two years and was attached to them.



Timeline of Events(7)

2017 – the latest data shows there has been a fourfold increase in court refusing adoption applications and the number of children being adopted continues to fall - 12.4% in April to June 2016, compared to the same period the previous year

Statutory guidance on SGOs updated in January 2017



Updated Guidance on SGOs

Key amendments: the assessment must address the following:

- Previous harm to the child and risk of future harm posed by their parents, relatives or any other person considered relevant
- Child's current needs and most significantly their likely future needs
- The nature of their relationship with the prospective special guardian, currently and in the past
- Parenting capacity of the prospective special guardian



S.20 Case Law.

February 2017

Court of Appeal judgement “The law does not require informed consent for s.20 arrangements to be lawful. Statute sets out that a local authority cannot provide s.20 accommodation if someone with parental responsibility objects and can provide an alternative”.

The parents in this case were unable to provide accommodation due to their bail conditions and therefore were “not in a position legally to object whether or not they formally consented”.

The Court of Appeal said the 2015 good practice guidance set out by Sir James Munby should still be followed, but not meeting it did not necessarily mean there was an 'actionable wrong'



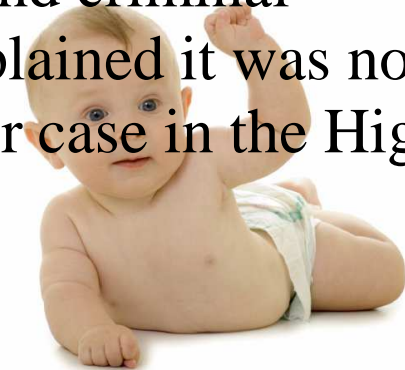
S.20 Case Law.

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Details of the case:

Parents initially arrested because of concerns the father had hit one of the children. Children taken into police protection. Bail conditions were that the parents could not have unsupervised contact with the children. Children accommodated under s.20 with parents signing an agreement.

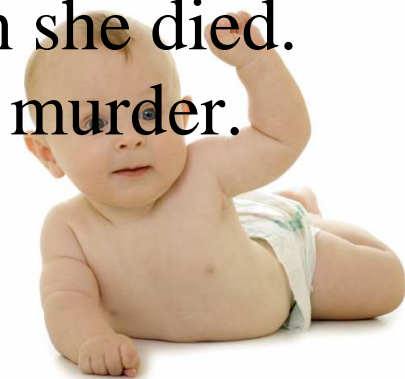
Eventually the children were returned home and criminal proceedings were dropped. Parents then complained it was not true consent or fairly obtained. They won their case in the High Court.



Other Relevant Factors

Serious Case Reviews

In May 2016 the MP for Birmingham called for the suspension of SGOs following the death of Shi-Anne (a.k.a. Keegan) Downer. Shi-Anne was 10 months old when a member of her extended family, Kandyce Downer, was granted an SGO, fully supported by the local authority and 18 months old when she died. Kandyce Downer was convicted of her murder.



Shi-Anne Downer

The conclusion of the serious case review was the quality of the SGO assessment was “Striking in its superficiality compared to those provided for adoption placements”. The review highlighted the stark difference between the assessment and preparation process of a prospective adopter and an SGO applicant.

The case was written up for closure the day the SGO was made.



2017 Oxfordshire Serious Case Review

Concerned two children under five, both with a range of physical and learning disabilities. A distant relative and her partner had been granted SGOs with supervision orders, again fully supported by the local authority. The children lived with the couple for 11 months until the abuse was discovered.

The partner was found guilty of physically abusing both children and raping one.



2017 Oxfordshire Serious Case Review

The conclusion of the serious case review was that “Neither of the special guardians had any experience of parenting, nor any experience of looking after children with substantial disabilities and disadvantages. They almost drifted into the children's lives yet became their legal parents”.



Conclusion

As always we should be thinking “What is in the best interests of the child?”, considering all of the different care options, and if your assessment is thorough and evidence-based the court will have no reason to find fault with your recommendation.

