4 Special guardianship: A variable second best

During the time that they're actually treated as foster carers I think they're treated pretty well. It’s after, when things move on. (Kinship social worker)

There aren't the same sort of resources within the service that there are within the fostering service. (Designated manager)

Special guardianship orders are seen as the cheap option with less support offered. (Children’s guardian/Independent social worker)

For carers who move into special guardianship having previously cared for the child informally or under a residence order, the order potentially offers the prospect of more support. They are required to give notice of their intention to apply to Children’s Services, which must provide a report to the court on their suitability. As part of this process carers can ask for an assessment of their support needs. Local authorities also have a duty to establish special guardianship support services and the power to pay a regular allowance, which must be aligned with fostering rates. Whether or not an assessment of support needs is carried out, however, and whether the local authority decides to provide support services to a particular family, is entirely discretionary.

Carers who have previously acted as kinship foster carers for the child are in a more privileged position (Wade et al, 2010). First, because the local authority is required to carry out an assessment of support needs, if one is requested. Second, since special guardianship orders are intended to be used by mainstream foster carers as well as kin, there are provisions to make them more attractive. Thus, for example, whatever money was being paid for the child by the local authority, including any fee, can be protected for two years after the order is made.

Support under special guardianship compared to kinship foster care

Even with their more privileged status, however, kinship foster carers who become special guardians are likely to notice a significant reduction in support, as they move from a status where support is an entitlement to one where it is largely discretionary and highly variable (see also Wade et al, 2010).

A care order provides a statutory requirement for services… we know they're going to be monitored and there's going to be a good plan. Support with an SGO is variable, some authorities are very good, others that's it…they close the case (or) plan to offer services but the reality of escalating numbers of cases is that they just don't get the attention and drop down the priority order. (Children’s Guardian/Independent social worker)

If (a child is placed) under Section 20/s31 (of the Children Act 1989) children and families receive good support. Not so much for those encouraged to take special guardianship. They tend to get pushed to the bottom and are not regularly reviewed. (Social worker)

Informants identified a myriad of ways in which support for special guardianship arrangements was less than that routinely available where the child had looked after status. These include the following:
Kinship foster carers are entitled to non-means tested maintenance allowances for the child for as long as the child is with them; the special guardianship allowance is discretionary, means-tested, reviewable, and its duration determined by the local authority.

In kinship foster care both the child and the carer have their own social workers, who are required to visit them at specified intervals. Under special guardianship there is no requirement for a social worker to be allocated at all. Typically the child’s social worker will close the case fairly soon after the order is made. Even if the family then goes on the books of a special guardianship support section, this is likely to be nominal. They will probably have a contact number, even a name, but this person is not responsible for contacting them or monitoring their needs. Issues arising will normally be dealt with reactively and on a duty basis.

All looked after children have regular reviews, chaired by an independent reviewing officer (IRO) which affords an ongoing opportunity to assess support needs. Under special guardianship there should be annual reviews, but these are primarily used to check whether the carer’s financial position is unchanged and are often only paper exercises.

Services for looked-after children and their carers are available for as long as the child remains looked-after; services for special guardianship arrangements cannot be guaranteed.

Unlike kinship foster carers special guardians will not usually have access to an out-of-hours helpline, privileged access to therapeutic service or respite care.

Children under special guardianship orders do not have Personal Education Plans or access to virtual schools.

Leaving care provisions only apply to older children who were looked after immediately before the order was made.

The fact that services for looked-after children are based on entitlement, while services for children on special guardianship orders are discretionary, does not have to mean, of course, that the service provided to the latter will be inferior. Local authorities have the power to provide a wide variety of services where needed and many of our informants mentioned special guardianship services which were available in their authority. Although no-one indicated that a complete array of services was available in their area, those identified included:

- Support for contact.
  - One authority commonly provided supervised contact for the first 12 months.
  - Another was developing workshops on contact and negotiating for the contact service to be extended to SGOs.
- Help with managing the children.
  - In one authority special guardians were eligible to attend a behaviour management programme designed for foster carers and training on attachment.
- Respite care.
- Life story work for the child.
- Direct work with the child.
- Counselling.
- Privileged access to therapeutic help for the child.
- Privileged access to an educational psychologist.
- Assistance with referrals to other services, such as CAMHS.
- Advocacy – with children in need services; housing.
- Training.
- Peer group contact such as support groups and family events.
- Regular communication with carers through a newsletter.

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20 Child and Adolescent Mental Health Services
- Dedicated access to information and advice so that carers do not have to go through the usual referral process.
- Access to an out of hours service.

Nor is it a necessary corollary that, because support is discretionary and not equivalent to that on tap where children are looked after, children and carers in special guardianship arrangements are not having their needs met. As one informant put it, special guardianship is intended to be a ‘step-down’ with services ‘tapering off’ until families can manage on their own, or utilising community services available to all families, as needed.

**Support gaps**

However, as in our carer interviews, the data from professionals strongly indicated that there were indeed many gaps in support.

Most (SG/RO) carers in my experience have no support and limited access to support. Once a child is placed and orders made, the LA closes the case. (Children’s guardian/independent social worker)

Often the granting of an SGO is seen as an opportunity for the local authority to withdraw almost completely. Levels of support vary greatly and are rarely adequate. (Chair of fostering panel/independent social worker)

As a foster carer you get your visits, get your reviews. Get all of that which could be seen as interfering and checking but can also be seen as supportive, whereas special guardianship is ‘bye, bye, if you need help come and tell us’. (Kinship social worker)

There are carers who do need far more support in maintaining a child within their family than the local authority can provide (under special guardianship). (Social worker, family placement)

I think the gap for me is obviously when there are ongoing issues, difficulties with contact and things like that, when you don't have an allocated social worker, so it's on duty in the child’s team or then after the first year it's in my team but it's on duty, you know, you're dealing with different people every time you contact so it's not a seamless service in that respect. And I don't think it could ever be, you know, in terms of resources, but that is a difference between a LAC service and a non LAC service. (Manager, kinship team)

My team manage all the post-SGO and RO cases. I have over 150 carers on that system and they can't be allocated, they're on a duty system and obviously the service is not the same, compared to having an allocated social worker who supervises the placement. So it's about resource at the end of the day and I know that, which is why I think sometimes even though people say ‘oh it can be put in a support plan’ I know that actually the service you get is less. (Manager, kinship team)

The gaps are special guardianship support. I think this needs more resources, post order, because although we’ve got some very committed people, given the number of orders there are I think they need to put more resources into that. I think it’s just one person does all the post-order support. We’ve got 100-odd SGOs. There are some which go back to the social work teams as well, but there certainly could be more support. (Local authority solicitor)

You hardly ever see respite care in a package of support for a special guardian. (Solicitor)

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21 i.e. a service for looked after children.
Many informants identified ways in which they felt support for special guardianship arrangements needed to be strengthened:

- Creating a dedicated special guardianship support team.
- Being able to offer on-going support.
- Being able to offer more time to carers.
- Making a dedicated support service open to special guardians who have not previously been kinship foster carers.
- The opportunity to reach out to carers rather than waiting for them to identify difficulties, sometimes when the situation has reached crisis point and it is too late.
- Providing more support for contact.
- Life story work for children.
- Groups for children.
- Developing training for special guardians, for example about attachment and behaviour management.
- Providing peer group support through groups specifically for kinship carers and/or mentoring.
- Availability of respite care.
- Having access to virtual education; priority for choice of school.
- Dedicated access to CAMHS.
- Prioritisation for social housing/help with housing.
- Providing financial support for post-16 education and training.
- Being able to negotiate support for carers in their home authority.

Some adversely compared the support available under special guardianship to post-adoption support and argued the two should be aligned, since there is a clear parallel between adopters and family members who also provide permanency for damaged children.

The parallels between these situations and adoption are strong ones really. It’s the treatment that’s inconsistent. (Children’s guardian/independent social worker)

Support for special guardianship needs to be properly set up like post adoption support with a dedicated team with a ring-fenced level of support on the same level as adoption, particularly in relation to contact. (Children’s guardian/independent social worker)

(You need) a dedicated support team in the same way that post adoption teams now provide on-going support to carers. (Children’s guardian/independent social worker)

They’re talking22 about children who are adopted, adopters having a passport so they can readily access services without having to wait…perhaps we ought to be considering that for SGOs because these are permanent placements…It’s a permanent placement and if the government say that they regard that as a way of enhancing placement stability with adopters…we’re talking about relatives who may for whatever reason, be more disadvantaged

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22 This respondent was referring to a Department of Education paper published in 2011 (An Action Plan for adoption, [http://publications.education.gov.uk](http://publications.education.gov.uk)) which proposed an ‘adoption passport’ i.e. a transparent guarantee of minimum and consistent support adoptive families will receive. This could include priority access to CAMHS, entitlement to parenting skills programmes, eligibility for child benefit payments regardless of their income, and tax credits.
than your average adopter, they're less skilled so they need the services more. (Children’s guardian/independent social worker)

Specific differences mentioned included: lack of a dedicated team; no privileged access to a psychologist; less support for contact; lack of attention to life story work; more basic reviews; and simply fewer resources.

Think about all the adoption support. They’ve got the same children but we’ve got less trained people with less skills and we don’t offer them a psychologist. (Children’s guardian/independent social worker)

Adopters can end up with enormous packages of support, very complex support, high level therapy. But if you need a slightly bigger car... It’s much harder to get that stuff if you’re a special guardian. (Children’s guardian/independent social worker)

There’s this dichotomy between adoption and what is offered to special guardians. The local authority is quite happy to supervise post-adoption contact with the full panoply of resources. (Children’s guardian/independent social worker)

At the moment what is happening with special guardianship is that once the order is granted the case goes to the adoption support team and they offer support but it is limited in terms of contact and post order support. There is a difference between what special guardians receive and what adopters receive. (Kinship worker)

For adoption, if you're asking the difference, we are routinely reviewing, not just financially the adoption support plans and at the end of the three years referring it on if that's what the adoptive parent wants. For special guardianship we're just bringing that in. We've started in a small way but we're not as developed as we are with the adoption support. (Designated manager)

One of the things you asked earlier was about what's the difference between special guardianship and adoption support. One of the big differences I think is life story work. We often assume that relatives, because they're part of the family, know the story and can help the child. I expect to be shot down by this lot (ie other social workers participating in a group discussion) thinking they might have to do another whole load of life story work, but it is a big difference, and relatives often don't know. (Social worker, looked after children team)

I always think we're just, we're the afterthought a lot of the time. We straddle both Permanence and Fostering, we sit on both sides of the service, but the other teams have loads more support than we do, we don't have any additional support services like Adoption has the post adoption support team. I would love it if we could have a post order support service like adoption has. We manage all of that on top of doing all the assessments. A couple of additional posts would be great. I think we do the very best that we can with limited resources really. (Kinship social worker)

Children’s guardians and independent social workers were particularly concerned about local authorities who seemed very ready to withdraw from supporting any parental contact arrangements as soon as possible, leaving carers to cope with this themselves.

One grandmother had come to court and told the magistrates she had had a lot to do with her grandchildren and would give up her job to care for them. The local authority had not previously identified her but did not oppose her having the children but did not agree any allowance and she had to abide by and supervise a lot of contact arrangements which were set
up when the local authority thought the children were going into foster care. She’s literally been left high and dry. (Children’s guardian/independent social worker)

The family were expected to supervise contact with a high risk paedophile. (Children’s guardian/independent social worker)

One specialist family and friends team didn’t see any role in supporting the carer with contact arrangements, which was quite crucial in terms of placement success...ultimately they agreed to give way on that but they said it was their policy not to provide that in special guardianship...there’s no budget for contact. (Children’s guardian/independent social worker)

Some kinship carers with special guardianship children in cases where there are challenging occasions, offer one year supervised contact in a contact centre. (Children’s guardian/independent social worker)

There were concerns that lack of support will lead to breakdowns or is actually already doing so, with some informants arguing for the need for a more proactive approach, since carers may be reluctant to ask for help:

Where placements don't survive, a huge amount of it will be not getting enough support. (Judge)

I feel sorry for the families, I see what they're going through. It affects the stability of the placement in the end if there's too much stress. There's loads of breakdowns. Lots of our families are under a lot of stress and a lot of pressure. In the end you get these people thinking ‘I wish I hadn’t taken this on in the first place’, especially when they're going on to have their own families. Which is such a shame, because if they're actually supported properly. They're taking on damaged children in lots of cases and they need more support. They don't understand about the child needing therapeutic help, so they need a helper to help them through that and do referrals to CAMHS. It's such a minefield. I do really feel for these people. (Manager, post-order support team)

I've got one case where I didn't do the assessment but I did help this child move into her placement seven years ago and this placement is now breaking down and I've got it back and that's awful and very sad, and if we had provided more support to these carers earlier on...I think it might have made a difference. That's not strictly speaking our fault because aunty didn't tell us really that she needed that help until it was too late really. But if we had the resources available we could make more contact with people and phone up and say 'how are things going', because I think people are willing to hear from us, but we can't actively go out and seek that work, we are just waiting for people to contact us. (Kinship social worker)

Informants in kinship teams spoke of their own growing recognition that special guardians were likely to need more support than they had previously thought or require it over a longer period.

I used to just accept people going off into the distance and not worry about them and now I do worry about them more and I want them to feel able to come back whenever they need to. (Kinship social worker)

I think that's what we've realised over time with doing this work. I think when we started, with the SGO support plans, we used to look at them and we didn't have very much support we could offer these people at that point, so a lot of the time we'd be saying things like ‘universal services’ or ‘they can come back to the family and friends team, we'll advise them
and refer them on’ and things like that, but I think now we're getting a much stronger idea of what sort of support people are going to need long term. (Kinship social worker)

At the same time informants were also all too aware of the pressure on their teams already. In teams which were responsible for both assessment (of kinship foster carers and special guardians) and support, the demands of the former, particularly where there were court proceedings, could all too easily squeeze out the latter.

We are a small team and there's this constant press if you've got a Regulation 24 placement. It's so intense when you're doing it and you've sometimes got two or three assessments on the go and they quite often all finish at around the same time as well, that's just the nature of the beast really, so that does take priority obviously because you've got such a short amount of time to do it and it is a very stringent process really. So that feels like it takes up the bulk of our work. (Manager, kinship team)

It's a very under resourced area. And I'm not just talking about my local authority, I'm talking about across the country. I know local authorities that have one person to manage all of the assessments plus all the post (order) stuff, and it's just impossible. (Manager, kinship team)

When I say we're a dedicated team we are dedicated. Individually and collectively we really all are committed to kinship care, we really believe in it and we really believe in the importance of supporting it. It's just a struggle sometimes to manage all of it, to manage all of those different responsibilities. Juggling people’s support needs. (Kinship social worker)

In foster care, of course, the two roles are separated, with family placement sections often having ‘recruitment and assessment’ social workers and ‘supervising’ social workers who provide support to the foster carer.

Teams dealing with special guardianship were typically described as ‘over-stretched’ and ‘under-resourced’, facing rising demands as the use of special guardianship increases, and struggling to maintain their current level of service within existing resources.

(If I had a magic wand) I would clone my team and double it. (Manager, kinship team)

I think if any (additional) resources do come our way then that’s going to be really mopped up in terms of the expanding group of SGO holders that we have to support. There’s been a doubling of SGOs in the last year and I don’t see that changing so in order to keep standing, to keep providing the support that we currently do offer, the team will need to expand. (Kinship social worker)

There are the challenges around capacity. I'm sure that if I was to put you onto a social worker from the team they would probably say they're meeting themselves coming back, because they are. (Designated manager)

We are taking quite a proactive support role. I don't know whether that will continue, just because there are more and more carers. (Designated manager)

An area that's of concern for me is that the caseloads for the social workers and the pressure on them has become quite onerous really and I don't see any end in sight because there's another round of local authority cuts. We haven't been cut, the special guardianship team, but I can't see any prospect of it expanding and it should do. What has happened in the last 12 months is that the only way that you can expand your team is by finding money elsewhere, there's no new money. (Designated manager)
Authorities providing or developing a higher level of service

Amidst this abundant evidence of support gaps, it also seemed that some local authorities were offering a better service to special guardians and the children they care for, a point also highlighted in the York University study of special guardianship (Wade et al, 210). In one, for instance, where special guardianship and post-adoption support were in the same unit, the services were said to be equivalent. A small team, two practitioners and a social work assistant, do ‘day to day support work with families’, including life story work with children, while more specialist support is provided through a service level contract with a family support team and a contract with an independent agency:

(X service) offer therapy and counselling; they have outreach therapists that go into the home to work with children and carers and families...Then we’ve got the Family Advice and Support team, who can go out 24/7, even on Christmas Day or Sundays, to support any SGO family. We can put them in to do protective behaviours work, with a therapist/counsellor, you can put them in to do parenting capacity stuff to see if there are any weak areas we need to look at. You can put them in for monitoring and support, they do really good groups for children. So in a high end case there could be about six workers involved with the family, with me coordinating it. I could be doing all the multi-agency work and one of my colleagues could be doing the contact side, and the social work assistant could be going in, and then (X agency) and (Y service). (Manager, post-order support)

In addition, in this particular local authority, carers have access to two support groups and a nascent mentoring scheme. Training is provided by an ex-social worker who is also a special guardian. The service is available to all special guardians, irrespective of whether they were previously kinship foster carers. While the team only do assessments on carers who have not been kinship foster carers, they go out to meet all prospective special guardians to explain what special guardianship involves and what support would be available.

Not unreasonably, this team was very proud of the service they were able to provide and so heavily resourced better than an

In a few authorities children and/or carers are routinely able to have the continued support of a social worker for a period, although only if the child was previously looked after. In one local authority we were told that the supervising social worker held on to the case for at least a year, after which it is transferred to the post-adoption support team. In another the child’s social worker remained involved:

There's a window of 12 months for us because the child’s social worker doesn't lose the case after the order is granted. I think that works quite well because often things aren't tied up properly, so my team do the assessment but at the point the order is granted it still remains with the children’s social work team for 12 months. And they obviously will do all the contact stuff and iron out all the bits and pieces, so there is a bit of a safeguard there. I don't think it's offered in many places. (Manager, kinship team)
Similarly, some local authorities are using the annual reviews proactively and holistically, visiting each family to assess whether there are any additional needs for support. Indeed in one authority the practice was to start off contacting the carer every six months, unless they indicated this was not wanted/needed.

When we do the annual review I've got a really brief assessment template that the social workers fill out in terms of contact, how are things going, are there any other needs for the family. We've done things like housing applications, we're constantly doing bits and pieces like that, where the family may need support in other areas. That's where my students come in handy. I often have two or three students at a time in my team so some of the advocacy work that needs to be done, I find that's quite a useful thing for a student to get involved in.

(Manager, kinship team)

There were also signs that, in some areas at least, local authorities are seeking to develop their services for special guardianship families. This might just be at the stage of exploring what needed to be done:

We're going to be looking a bit more at our special guardianship over the next two to three months because we've had quite an upsurge in numbers. (Designated manager)

Researcher: You said in your questionnaire that one of the things you wanted to improve was the support to special guardianship. What were you thinking of?

Because we're seeing a bit of an increase in special guardianship it's just I suppose about making sure that everybody who is a special guardian knows what services are around and what support they can expect. I think what I need to do is get a bit of a handle on what are the issues that special guardians may feel they have issues with, but it's about connecting. I can see whether there needs to be any other services required for them or just signposting to what services are already available. (Designated manager)

One manager with designated responsibility for kinship care said that his/her local authority had just decided to set up a dedicated special guardianship support service.

Traditionally what's happened is that we only keep them open for the payment and will review the payments annually and write to them if there's any change. What we've found over the last two to three years is that some families need us involved. And that has put an extra drain really on the children in care team so I've been advocating for a special team where we can actually do more in a proactive way for special guardians and that's what's just been agreed. That hopefully will be a really good service because my concern is that what we might start to see is the same as adoption, the breakdown of the arrangement. And so what I've been articulating is actually to prevent that happening, that we end up with lots of teenagers coming into care. We have got active support plans in a number of cases, but if we had a dedicated team we could do more of that and where those arrangements perhaps have started to look a bit problematic we could proactively do something. We have a very healthy post adoption service so looking at mirroring the groups for children, groups for carers and so on. (Designated manager)

Others referred to plans to expand existing teams:

The service we have is really ever so well received but I do really want to get another, either social worker or social work resource officer to work alongside the existing team that we've got so that we can continue to offer and expand that support function to more people.

(Designated manager)
What we have noticed is that we've probably had a 300% increase in special guardianship and it's been flagged up as part of our sufficiency agenda with regards to support, and that is what's just been developed within our adoption service. I think it's an additional five staff. To be able to offer that service for existing SGOs and new orders that come in. (Designated manager)

One was trying to negotiate more support for contact:

What I’m trying to do, is for the contact service, who offer contact supervision and arrange contact with families within care proceedings, what I’m hoping is that we can negotiate for them to actually take on the post order contacts. It will have to be run in a different way, it won’t be quite the same as the contact supervisor collecting or the carers bringing the child to the contact centre or the child being collected, and it being supervised the way of the care proceedings and the note taking and all that’s associated with that. I’m in the early stages of negotiating that. What I hope will happen is that we can write into special guardianship support plans that the dedicated contact service will be responsible for supporting, negotiating changes and facilitating the actual contact in future for these cases. So that’s something that I’m hoping that we will get sorted towards the end of the year. (Designated manager)

**Special guardianship support plans**

In principle, special guardianship support plans provide a mechanism to ensure that the particular support needs of the child and carer, and how those needs are to be met, are identified. This was seen by some as a considerable advance on residence orders:

The residence order seems to be classed as suck it and see, yes get one before you're entitled to apply for any support and that was one of the things that was really being sold about the SGO, you could see what the package was, you could actually then apply to the local authority to amend it, provide proof of exactly how much it costs to care for these children especially if they were already with you, and lots of local authorities if you provided them with proper breakdowns were then willing to change that and have that placed in the order. And lots of judges were saying that they wouldn't be prepared to make the order until the local authority had had that in place. (FRG case adviser)

Many professionals, however, both within and outside the local authority, commented that the quality of plans varied:

They’re very variable and that's not just in the authorities that I've worked in, I've seen the documents from other places as well. The best are very, very good, there's an assessment of need and an identification of how those needs should be met and then a plan for meeting them. On the other hand sometimes they're very woolly and they just talk about ‘support will be provided’, or there might just be a list of services that will be provided without saying what needs they're addressing or... ‘it will be kept under review’ without saying when, by whom and how. So yes I think it's very variable. (Local authority solicitor)

In a lot of cases I’ve seen very poor plans, or no support plan being prepared, in other areas where we’ve been contacted. I think we are fairly good, because we’ve spent a lot of time, we’ve always given a high priority to special guardianship. But even some of our support plans, sometimes they're not as good as they should be. (Local authority solicitor)

You can sometimes get a 16 page plan which sets out exactly what they plan to do and the support they plan to give and another time you'll get a two or three page plan which is quite vague. (Judge)
Some plans, and the support packages they promised, were described as excellent:

I've seen some really great support plans from local authorities, particularly in respect of older children ... consideration for the same kind of support that the children would have received had they remained looked after under leaving care provisions. They lose their full whammy sort of access to leaving care (provision) unless they're 16 already by the time the SGO is made, which is rare. But for children who are maybe 13, 14, I have seen local authorities factor into their support plans some provision which would be equivalent. Which is excellent, and very rare, I have to say. (Solicitor)

I'm just looking at a support plan ... financial support per week of £146 based on the national fostering allowance to assist in meeting X's care needs until X reaches the age of 18 years. That was to be reviewed annually subject to a means test. Sibling contact with the carer flying with the child to (X) three times year to see the brother, other contact will be supervised through the contact centre and life story work, on-going support for the duration of the order. (Solicitor)

I had a case last year in (LA X). My goodness me, the support package for those grandparents was phenomenal... the financial support was fantastic and really good support in relation to contact. I don't know why it was so much better than elsewhere. (Solicitor)

The support plans that I see provide for, depending on the needs of the child, quite extensive support and we often commit to ongoing funding of therapy and so on, that you wouldn't get through other routes. So my experience is that we provide a lot of support and it is needs-led, because there's real recognition of the needs of the child. (Local authority solicitor)

Too often, however, it was said plans were 'vague', 'airy-fairy', 'formulaic', 'hardly worth the paper they are written on'. Specific criticisms included: being generalised rather than specific to a specific child in the particular family; too brief; considering only short term needs; signposting to other services rather than specifying the services to be provided by the local authority; and limited in scope.

I’ve had a one liner…there was a great big form and only one part of it was filled in…we challenged it and got them to amend it and sort it out. It's extremely variable, it depends which authority you're with. (Solicitor)

The support plan is filled in but with what I’d call weasel words, not a substantive offer of help over and above what you’d get from normal services...they say absolutely nothing. (Children’s guardian/independent social worker)

Often plans are short term in nature and do not look to the needs of the placement in relation to contact, therapy or further proceedings. (Kinship social worker)

There’s often not a great deal about what support they will offer. Sometimes if it’s a child with some sort of special needs they’ll put something in. It might be that contact needs to be supervised and the local authority might then be trying to find a way of contact continuing in the future without it being supervised by the local authority. (Solicitor)

Some professionals also complained that the focus of the plan tended to be on the expectations of the special guardian, not the local authority:

The ones I’ve seen tend to be ‘these are all the things that need doing. Who is going to do it?’ The carers. Mostly the carers. (Solicitor)
I was in court last week and I asked for the support package and it listed all the expectations of the special guardian and the expectations of the local authority were that they would pay a special guardianship allowance. So I said ‘where is the support package?’ That’s it. Nothing else? (Children’s guardian)

Interestingly, some of the most trenchant criticism came from professionals within local authorities:

I think a lot of cut and pasting is going on because they all sound the same. It’s always the same wording and it’s not individual to the child and then it’s almost done as an, ‘oh we’ve got to do one as a little add on’, but if you did some really good work on that plan it would really help. I always ask for a copy of the plan and sometimes it’s very slow coming through because actually there isn’t anything of substance in it. (Manager, post-order support)

My view has always been that the support plan should form part of the assessment. I don’t think that happens all the time. I think that it becomes a tag on, at the end. And I think it would be quite useful to embed some ways of making sure the support plan is actually part of the assessment, for example requirements around respite care, or what’s needed. I think the assessment needs to be a lot more focussed around what the child needs in that placement as part of the assessment tool and not as an afterthought and negotiation tool. (Local authority solicitor)

Since special guardianship orders can only be made in court proceedings, support plans are subject to external scrutiny—by the carer’s solicitor if they are represented; by the children’s guardian if the application is made in care proceedings; and in all cases by the judge/bench. The court’s power is, of course, limited, in that they cannot direct a local authority to provide a particular resource. As one solicitor put it ‘all they can do is lean on the local authority a bit’. However under current legislation, they can refuse to make an order until they are satisfied with what the local authority is proposing. Thus any inadequacies in the plan should, in principle, be spotted and, ideally, addressed. And our professional informants confirmed reports from the carer interviews that this did indeed happen, referring to the part played by lawyers, children’s guardians and judges, both individually, or often, acting in concert.

You have to play a few games with making things difficult (for the local authority), threatening endless adjournments, getting the judge to back you up— that’s often good—and the guardian. The judge will say things like …’I want the Director of Social Services or the Assistant Director of Social Services to come to court and explain why they won’t do x, y and z’, and of course at that point the local authority usually back down because it’s got the backing of the court. (Solicitor)

Very often, at the Issues Resolution Hearing the guardian will say ‘where’s the support plan, I haven’t seen a support plan, I’m not signing off on this SGO’. Because again it will often be a case where people are taking things on, they may need to make alterations to their homes, they’re having to organise contact, all these kind of things. I have a look at the plans and I get the guardian to look at the plans and we rummage around and very often the final hearing is set up for two hours or half a day because we still haven’t got the plans organised. But they come along on the day and more often than not they sort it out and it’s done, and again as far as my powers are concerned there’s very little I can do apart from not approve an SGO, I haven’t got any other powers. But once you get people focusing. (Judge)

I don’t think a children’s guardian would allow a child’s needs to not be catered for in any final plan. I have known some guardians, very good guardians, who will scrutinise SGO plans and say ‘well what about this, what about that’, and actually speak to (the proposed special
The guardians, if they find anything in them, usually ask for them to be amended or re-jigged and I have had occasion to ask the local authority to do a better support plan. But again mostly that's been at the behest of the guardian who has wanted particular things addressed in the support plan. (Judge)

I’ve had quite a lot of cases where almost behind the scenes the real issue has been negotiating the deal, and with switched on solicitors they’re going to get it in black and white and almost into some form of contractual relationship. That’s the impression I get, ‘we’ll adjourn please for a period so we can get the financial package sorted’. Then they get it sorted and they get the local authority to commit themselves for an awfully long time into the future - 10, 15 years. Which I find quite extraordinary on the ones I’ve seen. (Judge)

The important role of the children’s guardian was also confirmed by local authority informants:

I don't know how many times I've been to court and the guardian is kicking up a stink because ‘well I don't see the support package’, and it is partly, unfortunately, because they don't trust local authorities and I don't blame them, I sometimes don't trust them either because the budgetary restraints that managers are under is huge. (Social worker, children in care team)

Guardians won't agree to agree to final orders being made until they've seen the support package.
Researcher: Do they ever challenge them and send them back?
They do. (Local authority solicitor)

However this safety net is already far from perfect. In the experience of FRG case advisors who took part in a group interview.

It's hit and miss, if you don't have a solicitor who gets it and you don't have a guardian or you're not a party and the judge ain't interested, having the pressure of 26 weeks, boom, boom.
You've got the child but you've got nothing else.
Yes exactly.
I find there's a real trend, I don't know if it's a growing trend, but with SGOs people don't even get the offer until the day of the hearing. It's hardly ever in accordance with the regulations that (carers) can actually take some independent advice and go back to them on it. And often it's after the order is made.
Yes. So the courts are signing off SGOs when the report is not compliant with (Special Guardianship Regulations). Because FRG struggled hard to get that bit in the Regulations, that the support package had to be spelt out. (FRG advisers group)

Where the application is made in private law proceedings, there will be no children’s guardian. The carers themselves may not be represented and lack the knowledge or the confidence to challenge the local authority position, and even if they are represented, some solicitors are said to be more knowledgeable/combative than others.

If you're on the ball - and I think the majority of solicitors should be now but there's still unfortunately some that aren't - you would use that as an opportunity to negotiate with the local authority far more than we ever did with residence orders or anything before. I had a
caller last week who got an SGO for two great nieces and nephews in December and the financial assessment is only now being completed (February), so there was no package, there was no support and nobody raised that on his behalf. (FRG case adviser)

The judiciary too were seen to vary in their willingness to challenge or even scrutinise the local authority plan and were said to be usually reliant on issues being flagged up by the guardian or solicitor.

Some judges run with (an argument that carers need support) more than others…you’ve got judges that will take (arguments for support) very, very seriously, and you’ve got other judges, unfortunately, who will basically say there’s nothing this court can do about it…(Solicitor)

It’s a document we would always have available should the judge want to see it.

Researcher: But judges wouldn’t routinely see it?

Hmm, they wouldn’t routinely see the support plan although the parent representatives will. And frequently the judge does say yes. I mean I’ve had a judge say ‘yes I’d like to look at it’.

(Solicitor)

Like lots of things in family law it depends a bit on the judge or the magistrate…I wouldn’t say that judges are particularly proactive in picking that up, it really needs to be one of the other parties, which is often the (children’s) guardian…if the guardian picks it up then the judge will then take an interest and be on to the local authority. (Solicitor)

If you have a bench, that’s no good at all, a bench will never have the guts to lean on a local authority and if you’re higher up the hierarchy the more you can lean on them basically.

(Solicitor)

There was also anxiety that the court’s ability to scrutinise and challenge the local authority may be diminished in future because of the combined impact of legal aid cuts; the planned 26 week limit for care proceedings; the narrowing of the scrutiny of care plans and reduction in the role and capacity of children’s guardians, which, some highlighted, was already constrained by Cafcass23.

I generally worry about the 26 week pressure now on court…currently the right judge will look the local authority in the eye and say, ‘no I’m not going to make this order until you’ve explained what the package is’. (With the new rule) how much pressure is there going to be for them to just say ‘look you must sort this out outside the court?’ (Solicitor)

One of our major worries about the recommendations (of the Family Justice Review) is ‘don’t interfere with care plans, let the local authority get on with them. Local authorities know completely that what a court process does is ensure that families get some support. One of the things we do best on children’s behalf is try and get them and their families support. It’s not just financial, it’s the support for education, getting CAMHS input, all the things that troubled children need. We’re doing what they should be doing anyway but they don’t do and they don’t want us to do it. And the local authorities are happy that they won that argument in front of Norgrove24, I’m afraid. But if a family placement doesn’t receive the support it needs you can’t say that it’s a proper care plan. (Solicitor)

Guardians are going to be trained not to look at (care plans), of course. I’m really worried about that. I will say openly that in Norgrove I recognised the terminology of (the head of

23 The Children and Family Courts Advisory and Support Service which provides children’s guardians.
24 Chair of the Family Justice Review.
Cafcass). He should be fighting for children’s needs, not local authority needs. I’m really worried about what’s happening and what has happened over the last decade with (children’s guardians) because I come from a time when guardians were the eyes and ears of the court. It’s frightening to see the difference with the new intake of guardians...Their training is all in house and it’s all about what they are allowed and not allowed to do. They could well be only two years qualified and we realise that when they don’t know about social work structure, how to write a report, what their function is, can’t give instructions. I think people would be horrified if they knew how much (children’s solicitors) protect guardians. (Solicitor)

As noted above, judges and solicitors typically saw the children’s guardian as a vital part in the court’s ability to scrutinise the support plan. It was notable, however, that while a few guardians did refer to cases where they had been able to make a difference to the support plan - ‘by just saying this support package isn’t good enough’ - a much more dominant theme in their interviews was the gradual erosion of the guardian’s role through larger caseloads and ‘proportionate’ working, which now limits the impact guardians can have on cases.

Children’s guardians now don’t have time to talk to kinship carers. They are expected to turn round cases very quickly because of proportionate working.

There is just too much work for us to do and you cut corners and hope you won’t have to give evidence on one of those cases.

I don’t feel I am adding as much to a case as I used to as I just spend less time with families and children and I don’t feel comfortable with that and I don’t know anyone who is. That’s weakened the guardian’s role. I manage because I’ve been a guardian for so long and am confident enough to criticise local authority practice. It’s more difficult at a final hearing to oppose the local authority if your enquiries are less rigorous. Guardians have always been open to that criticism but it’s a far stronger argument now.

The difference the guardian can make to the case, some thought, would be further diminished in the future if the court’s role in scrutinising the plans for the child is reduced, as proposed by the Family Justice Review (Norgrove, 2012) and carried forward into legislation currently before Parliament25. One guardian, having related how s/he had got a contact plan changed so that contact took place at a neutral venue, then went on:

It needed a lot of my intervention to trim the plan. That’s going to be different in the future when we stop scrutinising plans and our job is cut back. (Children’s guardian)

The use of independent social workers by hard-pressed local authorities to carry out assessments of prospective special guardians potentially injects a level of independent scrutiny. However all they can usually do is to make recommendations, which the local authority can choose to disregard. Moreover some local authorities carry out all assessments in-house or have a panel of independent social workers who regularly carry out work for them. While this is understandable in terms of wanting to control the quality of the work it potentially limits the capacity of the independent social worker to challenge local authority decisions.

As an ISW you can recommend all you like (in terms of support) but what is in the plan is down to the local authority. (Independent social worker)

25 Children and Families Bill, 2013
They know that if you’re independent you’re quite likely to make recommendations that are going to be consistent with what the child and the family need and they’re worried because they’re not going to be able to meet it and so they’re trying to control it which is why they wanted their own in-house teams so they could control what goes in the plan. (Independent social worker)

**Special Guardianship allowances**

One dominant theme pervades the professional interview material on special guardianship allowances - variation between local authorities. This applies to eligibility criteria, the amounts payable, and the period for which allowances will be paid. As several people put it ‘it’s a post-code lottery’. Little seems to have changed since the York University study, which concluded that ‘inconsistency was the norm’ (Wade et al, p7).

**Eligibility**

The Special Guardianship Regulations (2005) are enabling rather than prescriptive, empowering, but not requiring, local authorities to provide financial support to facilitate a person becoming a special guardian and to support the continuation of such arrangements when the local authority considers that it is necessary to ensure the special guardian can raise the child. Information about eligibility criteria is not readily available in local authority policies— a study by FRG (Roth et al, 2012) found that half the local authority family and friends care policies scrutinised did not cover this at all and only 35% covered it fully. Nonetheless it seems evident that different criteria are operating across the country. Some appear to confine eligibility to cases where the child has been a looked after child immediately before the SGO was made. Others are somewhat less restrictive, but stipulate that there must have been significant local authority involvement or the local authority must have played a major role in making the arrangements. Yet others appear to take a more case – by - case approach and do not rule out private arrangements made within the family.

Prospective residence order holders or special guardianship orders holders will be eligible for an assessment for financial support, in line with the county council’s policy and approved scheme, where the child/young person is looked after immediately prior to their application where this is necessary to secure the arrangement. (Local authority policy)

The local authority can pay a Special Guardianship Allowance to family and friends carers, but this will be at the local authority’s discretion and will generally be paid only where Children’s Social Work Service has had previous and significant involvement... A special guardianship allowance will only be considered for family and friends carers in situations where:

- Children’s Social Work Service has had a substantial role in placing the child away from their parents
- Children’s Social Work Service has requested that they care for the child as a direct alternative to the child becoming looked after.
- The child was made subject to a special guardianship order as part of care proceedings. (Local authority policy)

There’s a blanket view – looked after child only we would consider giving financial assistance. (Social worker, family placement)

In terms of financial support once again it becomes a case – by - case basis. If a child is looked after automatically there will be financial assistance in terms of special guardianship. If the child is not looked after then it’s the criteria that they need to meet, so in terms of this whole thing of whether the local authority enabled the placement or not, whether the child has
any special needs, you look at whether the person is on benefits, the carers who are caring for the children, and any other circumstances around that. (Frontline social worker)

Usually if people haven't already come to us for support and they're literally just going into court and it's a family arrangement, they're often the ones that don't require any financial support because the finances have already been sorted out within the family. So we don't find that we get a lot where there's a request for financial support where it's not been ones we've been involved in. That's just the way it works out but there's nothing to say that we wouldn't if the requirement came through. In my previous local authority we certainly did have some families completely unknown to us when we did the special guardianship assessment, it was clear that there was a need for financial support and that was put in place. There's nothing to stop that happening but in my experience it doesn't happen that often. (Designated manager)

The following exchange, during a group interview with kinship care social workers and managers, illustrates both the very restrictive approach taken by one local authority and the fact that other authorities would handle the same issue differently.

I've got a case at the moment where it's in proceedings and there are four children, one going for adoption, two with one family member and one with another. Two of them have been placed with aunt and uncle during proceedings and therefore they are now under Reg 24. They're getting financial assistance, everything, the other aunt I've assessed and it's been decided because she came forward a bit late we're going to do introductions but the child will be placed post proceedings, and just for that reason given six weeks difference, she won't get any financial help. And I think gosh, you know, those family members, if they talk together. It just seems wrong.

At the moment the child is in (unrelated) foster care.

In my opinion therefore (my local authority) certainly would have placed that child with the same support.

And we would.

If a child is a looked after child and someone steps in then they're eligible for the same level of support as...(Kinship care workers group)

**The amount payable**

Case law has established that individual local authorities, in determining the level to be paid as a special guardianship allowance, should refer to their fostering allowances rather than adoption allowances (B v London Borough of Lewisham [2008] EWHC 738 (Admin). A later case (Barrett v Kirklees Metropolitan Council [2010] EWHC 467 (Admin) also ruled two-thirds of the core fostering allowance. Some of the solicitors we spoke to, however, reported that not all local authorities were acting in accordance with these judgements.

Even if local authorities were all to comply it does not mean that the maximum allowances payable will be the same, since, as noted in an earlier chapter, some pay fostering allowances at the minimum set by the Department for Education while others use the more generous rates recommended by The Fostering Network.

What we have to do under the case law is align it to our fostering rates. Well if you pay a high fostering rate what you're paying as a special guardianship allowance is proportionately higher as well. Whereas if you're a local authority that doesn't pay such a high rate or pays the government recommended rate, as long as you've aligned it to your fostering amount, whether that's a high or low amount, you're fulfilling your legal requirement. And that's why it just
seems really, really unfair, and we're going to have to start thinking about that. (Designated manager)

Since allowances are supposed to be means-tested the amount carers receive may also depend on their financial circumstances. Again, however, local authorities seem to take different approaches with some not means-testing at all, some using the DfE calculation and others using their own system.

We moved a long way in a particular direction, which was that we would say to special guardians we will pay you the fostering allowance minus child benefit, we'll find a way of not means testing it and we'll make a commitment that, bar you winning the lottery, we'll carry on doing it. It's debateable whether that's legally permissible. We did it on the basis that somebody who is getting money isn't going to challenge it. (Local authority solicitor)

It's a DfE means test, which looks at both their income and outgoings, it's not like an Income Support level of means testing, it's relatively generous and includes anything that can be counted as sort of child care related. So if you've got a car loan in order that you can drive the child around then that will be counted as an outgoing. And obviously the house, the mortgage payments, all of those sorts of things. So actually a very high proportion of our carers get the full amount anyway. In general they're not very well off. And even with younger carers who have a reasonable income, they've also got very high outgoings, generally. The people who don't do so well are people who have got good healthy pensions and have paid off a big mortgage already and that sort of thing, the middle class ex-professional grandparent doesn't do so well, but actually, they're probably less in need. (Manager, kinship team)

Regulatory requirements mean that the council has to consider the special guardian's resources but the local authority can set the level of income that is disregarded. The local authority proposes that the level at which income is disregarded is aligned to the household income exceeding the level at which the higher tax rate would be applied (£38,000), not including income specifically for the child. (Local authority policy)

What we have with our scheme is a non-means-tested element, so you get it without doing the financial assessment. So for example, this is an actual case where the relative took on three children, they qualified for a percentage of the SGA which was calculated from The Fostering Network rate, then they got a non means-tested bit because they took a sibling group. And if there's very high contact levels we pay an additional amount outside of whatever the financial assessment comes up with. (Designated manager)

**Whether the total remuneration paid to foster carers will be protected when they become special guardians and for how long**

Where guardians had previously been approved as foster carers they will continue to receive the equivalent of a fee in recognition that the needs of the children they are caring for are similar to those that are looked after and are likely to make demands on carers that are above the norm. The fee will be based on (our) Payment for Skills Scheme. (Local authority policy)

If foster carers have gone for SGOs they can now get the fees (professional fee element). We are now saying – with annual review - we will guarantee it for the lifetime of the placement, not for the two years we did previously. (Manager, kinship team)

Some local authorities will pay the same rate (as fostering) when there is an SGO. That’s not what we do here. Currently the child has to be placed with the relative for two-plus years before we can protect that allowance. That rules out quite a lot of care proceedings children especially if the carer has a younger child. Carers are reluctant to apply for an SGO as they
feel they are going to be penalised. It is an age related payment but it depends on income and if income is low. If the child is not with them for two years something would be paid but it depends on income and savings. (Manager, kinship team)

*The duration of any allowance*

Special guardianship allowances are reviewable annually, which can create uncertainty for carers and can act as a disincentive to foster carers to make an application for special guardianship (Wade et al, 2010). Accordingly, one local authority, we were told, guarantees to all their kinship foster carers who became special guardians that they would honour the fostering rate until the child was 18 unless there is a significant change of circumstance. Others do so in practice. Elsewhere, however, it appears to be customary to pay for only a limited period:

> When I meet up with people (from other authorities) clearly quite a lot of authorities are just paying for the three years post order, which is the statutory minimum. (Manager, kinship team)

> Current foster carers who go on to become special guardians will continue to receive the long-term fostering allowance for a period of two years post order. (Local authority policy)

> I think at the beginning of the process (carers) are lulled into a false sense of security because they are given more kudos at the moment and so they're paid all the allowances the same as any other foster carer. They're thinking ‘this is okay, this is fine’ and then two years down the line, the allowances stop because it's only guaranteed for two years if they've gone on an order. (The plans might say) 'allowances to continue until the age of 18’ or something but we can't do that, that doesn't happen, it goes and then it's means tested and they're absolutely slaughtered after two years and we're saying ‘well I'm sorry, you're not able to get anything’ and they say ‘we were never told that’. (Manager, post-order support)

Not surprisingly, given this variation, some of the more generous local authorities were questioning whether they could sustain their position.

> (This local authority) doesn't operate a means test, they currently pay special guardians the full fostering rate. That's the position currently, I think it's going to change. It's not widely known but they've never worked out a means test, so at the moment every special guardian gets an SGA which is equivalent to a fostering allowance less child benefit. On each and every case. But I think they will be bringing in a means test. It's all linked to the policy about family and friends care. I think it will be approved shortly. (Local authority solicitor)

> We tend not to make (the SGA) time limited although to be honest it's something we've been looking at because lots of local authorities do time limit them. Obviously with the possibility of extending it. We would never have a blanket that they were all time limited but some families actually don't really necessarily need a special guardianship allowance long term but they might need one to get them over the next few years with the possibility of coming back. If we were time limiting them we would put the option in that people could come back and say 'look actually I need this allowance to continue’. You wouldn't have a cut off because that could potentially jeopardise the security of that child's living arrangements, and you wouldn't want to do that. We don't do that with adoption, we put an end date on but that's really like a review date and we say 'look, come back to us if you need that to continue’. Some do and some don't. (Designated manager)
Some also argued the need for greater standardisation, though this was not restricted to special guardianship allowances. Indeed in a couple of areas there were active moves to achieve a more consistent approach across several authorities. In London, for instance:

I've been involved in working towards a pan London SGO protocol which would be a baseline for all authorities in terms of some standardisation of how you will be paid, what you will be paid, what you will be paid for. We've suggested guide benchmarking in terms of legal fees and setting up allowances and holidays and a standard allowance. We were talking about financial assessments - if you're over a certain income you wouldn't get anything but otherwise you would be means tested but all on the same basis. (Kinship social worker)

Others, such as the social workers taking part in a group interview, argued that there should be a national allowance, centrally administered, partly to introduce some consistency into the system but also to separate the question of financial support from the other issues about supporting kinship arrangements.

I would like to see special guardianship allowances as a central government benefit. I do think that would help for a start. It makes it much clearer why it's being paid, because if it's left to the discretion of the local authority then in these times you can't be unrealistic, the local authority is always going to be looking to not paying it on some level. Or looking to stop it or making it time limited. Whereas there's clear evidence that families do better if well financially supported.

And that is transparent, and the same all around the country. Across the board and not means tested. Because it gets quite complicated, means testing, depending on the property you own and everything, so it's just one clear amount, this is how much you get, maybe a little more for London so that everybody knows exactly what it is that they're getting into and that there's no messing around with that element of things. I absolutely agree. I don't think it should be a postcode lottery and at the discretion of each local authority. In New Zealand when they re-jigged their entire childcare system, introduced FGCs, looked at kinship care, they've got an allowance that goes with the child. And it's not about whether you live here or somewhere else or whatever, you're looking after somebody else's child so you get the allowance.

I don't think it should be with the local authorities really. That would divorce that kind of aspect of things from the issues about other aspects of support or applicability of care. The (children’s) guardians are so much caught into the ins and outs of the SGO packages and the money and the rest of it, that we need to just be clearer, transparent and get all of that out of the court arena so that we can move quicker for our children, and that's just another one of those barriers in terms of how much they're getting paid. (Frontline social worker group)

The neglected older sibling? Support for residence orders

Before the introduction of special guardianship orders in 2005 (with the implementation of the Adoption and Children Act, 2002) a kinship carer could acquire parental responsibility for the child through a residence order. Unlike special guardianship, no specific statutory framework was created for the support of such arrangements apart from the power for the local authority to provide a residence order allowance (ROA). Carers have no statutory right to ask for an assessment of need, even if the child was previously looked after and there is no duty on the local authority to produce a support plan or to establish residence order support services. Hence support for holders of residence orders is even more dependent on the discretion of the local authority than for special guardians.

If they're on a residence order then there's no entitlement even to an assessment, the local authority can pay them an allowance but everything else is under the Section 17 child in need process. (Local authority solicitor)
If you're dealing with special guardianship you've got to ensure that the support plan is filed, whereas with residence order the law doesn't provide for as much support. They're still entitled to apply for a residence order allowance and you make sure that that's done. (Solicitor)

This absence of obligation is emphasised in a number of local authority policies. For instance:

In the case of a child who was looked after by the same carer immediately prior to the making of a residence order, there is currently no specific statutory guidance regarding any assessment which should be undertaken by the council for support services, which may include financial support. (Local authority policy)

Although residence orders appear to have been largely superseded by SGOs, at least as a permanency option for younger children when children’s services are involved, they are still made. Indeed in the year ending March 2012, 5% of children who ceased to be looked after did so because a residence order had been made. (DfE, 2012). There will be also a residue of historic orders in the population. However our reading of local authority policies, and interviews with children’s services staff, suggest that they are not usually central to professional thinking. Indeed some statements in local authority policies omit them altogether:

In exceptional circumstances, we may make an arrangement to provide advice, support and, if necessary, facilitate contact for a time limited period. We may be involved in supporting contact when it has been assessed and agreed as part of a specific plan to meet the needs of the child as part of a care plan for a child in care, or as part of a post adoption support plan, or special guardianship support plan. (Local authority policy)

Children will continue to have a named social worker from the Care Planning Team for 12 months following the granting of a Special Guardianship Order if they were looked after prior to the order being granted. After 12 months, these children and their carers will be transferred to the Kinship Team for annual financial reviews. (Local authority policy)

While this does not necessarily mean that residence order holders would not be treated in the same way as those with SGOs, this would not be apparent to kinship carers looking to policies to find out what help is available, nor necessarily to practitioners. Similarly, the FRG study of local authority policies (Roth et al, 2012) found that only 44% provided any information about eligibility for a residence order allowance, even fewer than for special guardianship allowances.

As noted earlier in this chapter, some of the local authorities were spoke to were planning to set up a dedicated special guardianship service. However there was no reference to residence order holders in this:

At the moment we seem to be looking at a post order team for adoption and special guardians. Hold all the support plans and have a dedicated support service. (Manager, kinship team)

A number of informants compared the way residence order holders were treated before the advent of special guardianship:
The local authority said ‘oh granny you've got your residence order, thank you and we're off’. So there was no support there. When SGOs first came in there was a bit of resistance from local authorities who were doing that ‘oh well why should we be paying for all these long term’, because they were comparing it with their responsibilities under a residence order. Once the penny dropped that the alternative to special guardianship is these people are foster carers, then it's worth spending money on it. (Judge)

Since the introduction of SGOs things have changed because a part of the SGO assessment form is specifically about the package that the local authority is going to provide including financial support. And so we all had to do SGO training when it all came out so you get your extra CPD points and whatever, so you know now far more than in regards to residence order allowances that you are supposed to be looking at your client’s financial needs. If you're on the ball you would use that as an opportunity to negotiate with the local authority far more than we ever did with residence orders before. So it brought a lot of us more into that area of expertise, because you knew that you had to do something that had to be completed before they agreed for the SGO to be granted. (Solicitor in FRG advisers group)

There was also evidence of some disparities in treatment continuing, or only changing very recently. Thus residence order holders might be outside the remit of the post-order support service:

*Researcher:* The support is for people with SGOs. Do you cover residence orders as well?

No. They are not covered. They may be getting financial support.

*Researcher:* So if they needed support where would that go?

I guess it would go to intake, would it?

As a child in need. But if they went to intake the referral would be about the child. So it would be about, ‘I'm not coping with this child because of his bedwetting or because of A, B, C’, so the focus would be particularly on an assessment of that child’s needs. (Social worker group)

One local authority had only recently opened up its special guardianship support group to residence order holders, who had become aware that greater support was available on an SGO:

We have some people who have got a residence order and they've come and said 'we would like to go for special guardianship because we'll get more support, we know we've got an allowance but we need more than that' because of problems usually to do with contact. So what we did is we asked the support group which is made up of special guardians, would they object to some people with residence orders coming to the support group and they said no they wouldn't, so we do have some people who have got residence orders who are having exactly the same, because it seemed a bit silly to us to force people to go to court for something that we could provide anyway.

*Researcher:* Would they be able to access the other support from your team?

Well those who have already joined the support group also can have the mediation work and the work on life story work and they're also invited to the Christmas party. They're drawn in because we didn't see it as a necessary piece of work for people to force them to go back to court to change the order when we could actually provide (support), we felt it was a little bit churlish to say that. So as long as it's manageable and it is. We have got special guardians and a few others. (Designated manager)

Inequitable treatment was also evident in relation to residence order allowances, both in the maximum length of time for which the ROA would be paid in and the amounts payable.
I think that’s an anomaly for us because we pay it at a different rate and I think most other people do too.

We pay the same as special guardianship when a child has been a *looked after child*

If I get a residence order because that’s the best plan for the child I’ll probably argue for a payment at the SG rate.

We have a very different rate. We have a basic rate and an enhanced rate. All special guardians get the enhanced rate but everyone on a residence order gets the basic rate. (Kinship care workers’ group)

In spite of existing case law carers are still having to battle for everything. (X local authority) pays a residence allowance at 57% of the fostering allowance. After the Kirklees case they increased their special guardianship allowances to the same level as their fostering allowance, but they kept the residence order allowance the same. They say (the case law) doesn’t apply to residence orders. (Solicitor)

Residence order allowance is minimal so it’s a big commitment for families.

Oh yes, I’d echo that, I’d echo that. (Frontline managers’ group)

Information from carers also suggests that those with residence orders were treated less favourably than those with special guardianship orders. Thus less than half (11 of 24) were receiving a regular allowance, compared to 88% (23 of 26) of special guardians. The national survey also found that those with an SGO were almost twice as likely to be receiving an allowance (57% compared to 29%) (Aziz et al, 2012).

Some local authorities, however, have taken steps to equalise the treatment of the two groups, whether in terms of allowances or access to a dedicated support service.

**Allowances**

We do it the same for residence, special guardianship, adoption so that there is no financial incentive to go for one order rather than the other because, you know, it didn't make sense not to. It is fairly generous because it’s aligned with Fostering Network rates which are very high. (Designated manager)

Residence order financial support continues to be assessed in the same way as Special Guardianship Order financial support. The authority will consider only the allowances that the carers receive in respect of the child. After the carers has claimed any benefits to which they may be entitled for the child the Local Authority “tops up” so that income they receive for the child or young person is equivalent to the age related foster care allowance, with the provision that the maximum the authority would pay for is until the child was 16 or 18 if in fulltime education. (Local authority policy)

We have been fairly generous here in terms of support to carers partly because it’s in our interest for children not to be *looked after* if possible because it’s costly and bureaucratic, so we wanted to make the decision so that kinship carers felt they didn’t have to be foster carers in order to get the same financial support, and they would get the same support financially under a special guardianship order for example, or even a residence order allowance. So that’s the system that we set up, which I think has worked. (Local authority solicitor)

Some of the historic residence orders finished at 16 and so we felt that some of the people who had residence orders for 16 year olds would then apply for an SGO in order to get it up to 18, so we agreed that although the residence order finished at 16 we would again pay until 18. (Designated manager)

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26 *Barrett v Kirklees Metropolitan Council* [2010] 2 FLR 405 (See Appendix B)
**Other forms of support**

In law there is the adoption support plan and there’s now the special guardianship support plan, but there’s nothing for residence. But here, just to institutionalise it, we have permanence support plans. Adoption, special guardianship or residence order, it should make no difference what the legal route is to permanence. They will get the same service from us. (Kinship social worker)

My team manage all the post SGO and RO cases. I don't have issues in terms of therapeutic intervention because we have a CAMHS in-house service here. So even my residence order kids and my special guardianship kids, if they need a therapeutic service, it's easy for us to get that to them. (Manager, kinship team)

Children will continue to have a named social worker from the Permanency and Adoption Support team for 12 months following the granting of a Special Guardianship Order or a Residence Order if they were looked after prior to the order being granted. After 12 months a formal review will be held to determine whether a named social worker needs to remain allocated to the child. ...The Permanency and Adoption Support team is able to provide support, information and guidance via its duty service. (Local authority policy)

Children in SGO or RO arrangements should receive education and health support from their schools and local health provisions. If carers are having difficulty in accessing support in these areas, the Kinship Team is available to advocate and support families to be able to access the community supports which should be available to them. (Local authority policy)

**Privileging of previous looked after status**

Even where there is parity of treatment between SGOs and ROs, as will be evident from the data already presented in this chapter, greater support is likely to be available where the arrangement involves a previously looked after child. Thus in some authorities carers are only - or less rigidly, ‘generally’ - eligible for an assessment of their financial needs if the child was previously a looked-after child.

One particular example, the department hasn’t supported financially but we know this child, we know this grandmother, because the birth parent has psychotic episodes, and I don't know how the arrangement came about but I think it could be argued that it was a Section 20 placement. However it was treated as a section 17 and it was felt that the best plan at that time was if this grandmother claimed this child and took out a legal order so that there would be that legal security. So the social worker made a case and I know that that wasn't supported and the grandmother felt that she really couldn't take out a legal order unless she had the finances to back her up and see this child through, right through. But yes I think grandmother was put in a different position there. (Social worker, family placement)

Those who have acted as kinship foster carers can have their allowances protected for at least two years and in some local authorities for considerably longer. They will also usually have automatic access to dedicated support services, whereas other carers may be excluded. Indeed in some authorities either the child’s social worker or the supervising social worker will remain involved in order to ease the transition to a private law order.

Clearly these privileges could be important in terms in incentivising foster carers to take out private law orders. **One questions, however, what this has to do with meeting the needs of children and their carers who are not so fortunate but whose needs are almost certainly equally great.**
It is therefore important to note that some local authorities are striving to deliver a more equitable service. Thus one post-order service explicitly offers support to any carer who holds a residence order or an SGO, irrespective of whether the child was previously looked after or whether the order was made in public or private proceedings, while another deals with ‘any kinship arrangement where there have been child protection concerns’. Another authority commits itself to offer an assessment of support needs ‘if the child or young person would otherwise have been looked after if not cared for by the prospective special guardian’, noting that:

In offering assessments in these circumstances the authority is going further than the regulations require as they state that a child who is not looked after may be offered an assessment. (Local authority Strategy document)

These are, however, exceptions.

Summary

- Special guardianship offers certain benefits to carers and children in terms of support in that local authorities have a duty to establish special guardianship support services and carers can ask for an assessment of support needs. However there is no entitlement to support.

- Where a child has been previously looked after, special guardians are privileged, in that the local authority must, if requested, carry out an assessment of support needs and, where the special guardian has previously been the child’s foster carer, any monies they have been receiving can be protected for up to two years. Nevertheless even for this group, support remains largely discretionary and highly variable.

- Although overall a wide range of services could be made available, professionals identified many ways in which support for special guardianship arrangements needed to be strengthened. There was a growing awareness of a need for on-going support and that better and more proactive support could prevent placement breakdown. Teams supporting special guardianship were typically seen as stretched and under-resourced.

- Respondents suggested that special guardianship support should be aligned with post-adoption support.

- There was evidence of variation in provision with some local authorities offering or developing a higher level of service, although sometimes this was limited to children who had previously been looked after.

- Policy in relation to special guardianship allowances varied in terms of the eligibility criteria, whether the allowance was means-tested, the amounts payable, the length of time for which an allowance would be paid, and whether, and for how long, previous foster carers would have their allowances protected.
• Special guardianship support plans were of variable quality. While some were excellent, others were brief or formulaic, not geared to the specific needs of the particular child.

• Since an SGO can only be made by a court, the support to be made available is subject to external scrutiny – by the judiciary, by the carer’s solicitor if they are represented, by the children’s guardian if the order is made in care proceedings. It was evident from both our carer and professional interviews that this does provide an important safety net.

• It is, however, a safety net whose effectiveness is already variable, limited by the type of proceedings, whether the carer is represented, the approach of children’s guardians, solicitors and the court.

• There was also anxiety that the effectiveness of the safety net will be further reduced by the combined impact of legal aid cuts; the planned 26 week limit for care proceedings; the narrowing of the scrutiny of care plans and reduction in the role and capacity of children’s guardians.

• Prior to the introduction of special guardianship, a kinship carer could acquire parental responsibility for the child through a residence order. These carers are in a weaker position because there has never been a specific statutory framework for the support of such arrangements although local authorities have a discretionary power to pay an allowance.

• Some local authorities have equalised the treatment of ROs and SGOs in terms of allowances and access to dedicated support services. Elsewhere allowances may be lower, and they may be outside the remit of special guardianship support services.

• Even where there is parity of treatment between SGOs and ROs, greater support is likely to be available for those arrangements involving a previously looked after child. Some local authorities are striving to deliver a more equitable support service to any kinship carer whatever order the child is placed on, irrespective of whether the child was previously looked after or not, but this unfortunately seems rare.