



Public Law Working Group publishes report on special guardianship orders

The Public Law Working Group recently published a report on special guardianship orders (SGOs), namely "Recommendations to achieve best practice in the child protection and family justice systems: Special guardianship orders June 2020". The report is valuable reading for all care practitioners and proposed special guardians (SGs) alike.

Annexe E contains the "Best practice guidance for special guardianship." Sir Andrew McFarlane, President of the Family Division, has endorsed the guidance, calling it "comprehensive and authoritative" and further that "...the practice guidance should now be applied and used in every case where an SGO is an option in the hope that, as the authors say, it will improve the outcome for children and special guardians."

The best practice guidance

The best practice guidance highlights several challenges that have hitherto been faced when a potential SG is identified in care proceedings. Of particular concern is the drive to complete cases within the statutory time limit of 26 weeks; although interim guidance has reinforced the judge's power to approve an extension beyond 26 weeks so as to allow issues to be fully addressed. As the new guidance says at paragraph 24: "The focus will always be on welfare and the fundamental requirement for a robust, evidence-based assessment. This will be the guiding factor as opposed to the statutory timescale of 26 weeks".

The following matters are of particular note in the guidance:

1. It is important that realistic options for the child are fairly evaluated and that a cap is not placed on the number of potential carers by way of case management directions.
2. Where there is a positive initial assessment then there will be a detailed plan that sets out the next steps (see paragraph 15 of the guidance).
3. There ought to be thorough preparation, training and assessment of a person identified as a prospective SG.
4. All parties should set out details of proposed carers in advance of the first case management hearing.
5. If a family member is being considered a prospective SG after an initial assessment, then this should raise issues as to the interim placement/plan for the child. Consideration will need to be given to the fact that if an interim placement does not develop into a long-term placement, then this can have serious consequences for the child.
6. Where the interim plan for placement with the prospective SG is endorsed by the court, a timetable will need to be prepared to enable the proceedings to be completed. The timetable will take into account: i) the legal framework authorising the interim placement with the prospective SG, and ii) the period of time required for a robust evidence base to be established about the quality of care of the child by the prospective SG, including for example the amount of parenting experience the prospective SG has, the identified needs of the child and the relationship the prospective SG has with the parents of the child and other family members.
7. An agreed plan must be completed on a case-by-case basis that enables each of the issues fully and realistically to be addressed.
8. The court timetable to resolve outstanding issues before a final order can be made should be dictated by the facts of the particular case. The guidance says "It is anticipated that this will be no more than 12 months from the interim placement of the child with the prospective SG."



9. Where the local authority considers, on evidence, that the prospective SG is unsuitable then it must inform the court with a view to reviewing the court timetable. The local authority's reasoning must be set out in a report and be made available to the prospective SG. The local authority must notify the prospective SG of the procedure to be followed in challenging the assessment, including the procedure for any application to the court seeking leave for ongoing assessment pursuant to s. 10 (9) CA 1989 or to be joined as a party to the proceedings. Any challenge should be pursued promptly within a reasonable timescale.

In addition to the best practice guidance the Public Law Working Group made four immediate and four longer term recommendations as regards SGOs.

Immediate recommendations

1. Special guardianship assessments and special guardianship support plans (SGSPs) should be robust, comprehensive and compliant with regulations. The court timetable needs to be realistic to enable this.
2. There needs to be better preparation and training for SGs.
3. Save for cogent reasons, a supervision order should not be made alongside an SGO. Where there are such reasons they ought to be set out in the recital to the order. All support and services to be provided to the special guardian and child should be set out in the SGSP, which should be attached as an appendix to the order making the SGO.
4. Parental contact needs to be given careful consideration before making an SGO. This includes considering: i) the purpose of the contact, ii) the factors relevant in determining the form and frequency of contact, iii) the professional help required to support SGs in facilitating such contact over time, and iv) the planning and support required to ensure the stability of the placement in the context of the ongoing contact.

Longer term recommendations

1. An ongoing review of the statutory framework, including in particular a review of primary and secondary statutory provisions relating to SGSPs. This is particularly so given there are regular reviews of guidance and regulations in relation to adoption and fostering. Placement regulations ought to be reviewed to consider whether an option for local authorities to place with prospective special guardians under a care order might be an appropriate development.
2. Further detailed analysis and enquiry should be undertaken in relation to the placement of children with prospective SGs, including: i) whether the Children Act 1989 should be amended to provide a power to make interim SGOs, ii) a review of fostering regulations in relation to family and friend carers, iii) whether to impose a further duty on a local authority to explore whether there are potential carers who could be appointed a SG for the child with accompanying statutory provisions to support local authorities in gathering this information, and iv) improved national support provisions for SGs and the children they are raising.
3. A review of public funding for proposed SGs.
4. Effective pre-proceedings work, including Family Group Conferences (FGCs) being a matter of routine and the use of the Family Rights Group's "Initial Family and Friends Care Assessment: A good practice guide."

The report can be accessed here: <https://www.judiciary.uk/wp-content/uploads/2020/06/PLWG-SGO-Final-Report-1.pdf>

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