

## **Family Justice Council:**

### **Interim Guidance on Special Guardianship**

1. This interim guidance is issued by the Family Justice Council with the approval of the Sir Andrew McFarlane, President of the Family Division, in response to some of the issues identified in **Re P-S (Children) [2018] EWCA Civ 1407**. Its primary purpose is to address cases where an extension to the statutory 26-week time limit is sought in order to assess potential special guardians, more fully, within public law proceedings.
2. In producing this guidance, the Council has worked closely with the President's Public Law Working Group, chaired by Mr Justice Keehan and with the researchers commissioned by the Nuffield Family Justice Observatory, and led by CoramBAAF in partnership with Lancaster University, to review the research evidence on special guardianship. More comprehensive guidance on public law is expected later in the year but the Council felt there was a need to provide some interim guidance on special guardianship to assist practitioners, now, and to help start the process of change.
3. As a general proposition, alternative potential carers should be identified at an early stage and, where possible pre-proceedings, by adherence to good practice including convening a Family Group Conference at an early stage. Assessments should be commenced promptly and be evidence based, balanced and child-centred. In the event that a full assessment is undertaken it will usually require a 3-month timescale. See the attached document, "*Timetabling and timescales for full family and friends assessments*",<sup>1</sup> and the Family Rights Group Assessment Template (Annex C): <https://www.frg.org.uk/involving-families/family-and-friends-carers/assessment-tool>. Both are a model of good practice and in the absence of any exceptional features, the process and criteria identified should be standard to any special guardianship assessment.
4. Where proceedings have commenced, all parties (including the Guardian) should file and serve position statements in advance of the first Case Management Hearing to include the details of proposed carers for assessment by the local authority. In the social work statement potential carers must be clearly identified by reference to a genogram or otherwise and the Guardian's Initial Analysis/position statement should explicitly

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<sup>1</sup> With thanks to Natasha Watson, Principal Lawyer Safeguarding and Litigation, and the Family and Friends social work team of Brighton & Hove City Council

address the identification of carers and their contact details. These SHOULD NOT be governed by the parents' approval or disapproval but must be focused on the child's interests. If the whereabouts of prospective carers are unknown, the family or, if appropriate, other agencies should be invited to assist in locating them. If the viability assessment is negative, the local authority must notify the subject of the assessment of the procedure to challenge the assessment including the procedure for any application to the court either seeking leave pursuant to section 10(9) of the Children Act 1989 or to be joined as a party. Any challenge must be pursued promptly within a short timescale. The application should be referred on issue to the allocated judge or (if not available) another public law ticketed judge for urgent directions.

5. In most cases, compliance with good practice will ensure that any prospective special guardian has been identified at an early stage and the assessment completed within the statutory timescale. Issues of non-compliance/litigation failure fall outside of this guidance.
6. It is recognised, however, that there are cases where possible carers are identified late in the proceedings or for other reasons further time is required to assess the relationship between the child/ren and the carer(s) fully.
  - a. The issue of later identification of potential carers was addressed by Sir James Munby, P in **Re S (A Child) [2014] EWCC B44 (Fam)** at paragraph 33 (ii)(c). In summary, a proposal for assessment of a late entrant to the proceedings must be realistic and not merely a trawl through all possible options, however unlikely. If the application has a sound basis, an extension beyond 26 weeks should be permitted if it is, "necessary to enable the court to resolve the proceedings justly" [section 32(5) Children Act 1989] and as such will be readily justified as required by section 32(7) of the Act.
  - b. Where the proposed carers appear to be viable, the assessment of carers living in another country will also justify an extension of 26 weeks. In these circumstances time may be needed for Children and Families Across Borders (CFAB) to carry out an assessment and there may be unavoidable delays which will, quite properly, take the case beyond 26 weeks.
  - c. Where more time is needed to assess the quality of the relationship between the child and proposed carers. This is likely to arise after the court has undertaken the welfare evaluation in terms of the possible arrangements for the child/ren but further time is required

to ensure the stability of the placement. Whilst circumstances vary widely, it is likely that this will lead to an extension of the timetable, particularly if the court has indicated that this is the preferred placement. The extension period will depend on the individual features of the case but any delay should be proportionate to the welfare criteria set out at sections 1(3) and 1(4) of the Act.

7. Where a viability assessment is positive, the parties and the court should, when making directions for a full SGO assessment, consider, and if necessary make orders relating to, the time the children will spend with the proposed carers. An evidence-based assessment which does not include any assessment of the proposed carers' relationship with the child is likely to be regarded as incomplete.
8. If the court approves an extension, consideration will need to be given to the legal framework. It may not be possible for the child to be placed pursuant to an interim care order under the current regime imposed by Regulation 24 of **The Care Planning, Placement and Case Review (England) Regulations 2010**. In these circumstances, an alternative approach would be placement pursuant to section 8 of the Act: a Child Arrangements Order and an interim supervision order to provide support for the placement, particularly during any transition period. The court should bear in mind the consequences arising out of any change to the legal framework, particularly if it impacts upon the child's status as a "looked after" child pursuant to section 22 of the Act<sup>2</sup>.

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<sup>2</sup> Since April 2016 children cared for by special guardians who were 'looked after' immediately before the Special Guardianship Order was granted have been eligible for the Adoption Support Fund (ASF). The ASF provides funds to local authorities and regional adoption agencies to pay for essential therapeutic services for eligible adoptive and special guardianship order families.