

# Public Law Outline

## CoramBAAF Statement

### Regarding the relaunch of the Public Law Outline: the return of 26 weeks and what this means for the assessment of prospective kinship carers

2 February 2023

#### Introduction

In his recently published [A View from The President's Chambers: November 2022](#), Sir Andrew McFarlane, President of the Family Division, relaunched the Public Law Outline. He stated, 'It is now clear to me that there is a need for a radical resetting of the culture within the Family Court so that the system reconnects with the strictures of the PLO and, once again, aims to meet the statutory requirement of completing each public law case within 26 weeks'. He set out his campaign 'to exhort, require and expect every single professional, judge, magistrate or staff member in the system to get back to operating the PLO in full and without exception' and for all courts and local authorities to be ready to do this by 16 January 2023.

This document is intended to remind practitioners that, when implementing these changes, they should be aware of and consider the Best Practice Guidance on the use of special guardianship orders, written by the Public Law Working Group in June 2020. This stated clearly for the first time the need for a 12-week timescale for the assessment of prospective kinship carers.

#### Background and context

CoramBAAF is in support of a return to the 26-week timeframe, when this is achievable, as it secures timely decision-making for children and their families. We also recognise and understand the many challenges faced by local authorities and courts over recent years that have resulted in a backlog of care cases and a rise in the number of weeks until completion – in 2021, the average duration of a care case was 44 weeks. Sir Andrew refers to the 'normalisation of delay', and whilst recognising the impact of overstretched resources, he comments that despite everyone's best efforts, it is too readily accepted that 'delay will be compounded by delay'.

But there are instances where delay is necessary. Delay caused by necessary assessments of prospective kinship carers or interim placement of a child with a proposed special guardian is both **planned and purposeful delay**.



However, CoramBAAF is hearing from some members that very short timescales for assessments – for example, six or eight weeks – are being made by courts, to try to reduce delay. This should be avoided and is not in line with best practice guidance. The relaunch of the 26-week timeframe should not lead to a reduction in the timescales provided by the court for kinship assessments, as this will negatively impact the quality of assessments and the ability to effectively care plan for children.

Whilst this overarching goal is important, these practices are a concern. Therefore we hope this Statement will be a useful reminder for members, colleagues and practitioners of best practice guidance when assessing kinship carers.

## Best practice guidance

In March 2019, the Family Justice Council published [interim guidance](#) on best practice around the use of special guardianship orders. It referenced models of good practice for initial assessment – [Kinship Assessment Guide](#) (frg.org.uk) – and full kinship assessments – [Timescales for Full Assessment Guidance](#) (judiciary.uk). This interim guidance informed the Best Practice Guidance on the use of special guardianship orders, written by the Public Law Working Group that followed in June 2020, and stated clearly for the first time the need for a 12-week timescale.

The [full guidance](#) that followed set out the following recommendations:

- Full and comprehensive assessments are completed of prospective special guardians and sufficient time is afforded to local authorities to undertake these assessments.
- Where a child has not previously lived with the prospective special guardian, a child needs to be cared for on an interim basis before a special guardianship order should be made – “testing out period”.
- Special guardianship support plans must be comprehensive, informed by the lived experience of the child and carer and based on the assessed needs of the child and carer.
- Plans must include clear provisions for how a child will maintain relationships and spend time with parents (and/or other former carers), including the planning and support for any arrangements.

## What does this need to look like in practice?

### Pre-proceedings

During pre-proceedings, many practitioners will be working in partnership with parents and wider family of the child to do their best to proactively engage with the family network, to identify prospective kinship carers and start assessment work. However, there will always be barriers to working in this way.

Some parents struggle to share information with wider family members or provide an honest or realistic picture of the extent of the concerns about a child. Their reluctance to do so might be a reflection of complex family relationships and/or their feelings of fear, anger, guilt or shame. From a



legal perspective, social workers are limited in what information they can share, outside of proceedings, without consent from parents.

Some family members will be actively supporting parents to make the necessary changes to safeguard a child, and therefore hoping that the child will be able to remain in the care of their parent/s. For some, it is too difficult to fully contemplate the reality of needing to care for the child, as it is only a hypothetical scenario. Therefore, to start any detailed assessment work with them as prospective carers is premature as they are often simply not ready.

#### Suggested steps to follow:

- Explore any potential sources of support and/or potential alternative carers with the family.
- Consider use of family-based decision-making, such as Family Group Conferences and family meetings.
- Undertake initial assessment of prospective kinship carers where possible, to identify any carers needing full assessment.
- Consider whether any family members could provide immediate care if needed and become temporarily approved kinship foster carers under Regulation 24.
- Begin full assessments of kinship carers where possible.

### Care proceedings

There will always be situations where local authorities have been unable to explore who may be best placed within a family network to provide care for a child, prior to the initiation of care proceedings, and situations where parents continue to struggle to identify potential caregiving family members until later in proceedings. However, this should not result in reduced timescales for assessment.

#### Suggested steps to follow:

- Identify any prospective kinship carers by the date of the initial case management hearing.
- Complete any initial assessments of prospective kinship carers within two weeks.
- Consider whether any family members could provide immediate care and become temporarily approved kinship foster carers under Regulation 24.
- Consider Family Group Conferences or family meetings to support the family to identify any prospective carers and to support the thinking around who is best placed to care for a child, to avoid unnecessary multiple full assessments.
- Allow 12 weeks for a full assessment.
- Agree a timeframe for a “testing out” period where required.
- Agree a timescale for an updating assessment where required to analyse the quality of the child/carer relationship, and the care received by the child.
- File a comprehensive special guardianship support plan or fostering support plan with final evidence.



## Examples of local practice

CoramBAAF is aware that some local authorities have worked with their judiciary and legal community to agree local protocol on timescales. For example, Birmingham City Council and Solihull Metropolitan Borough Council have agreed a *Timelines Document* with the court that sets out the days and weeks of the 26-week timeframe, specifying tasks, requirements and responsibilities, including the need for 12 weeks for completion of a kinship care assessment.

## Conclusions

The relaunch of the PLO is welcome, and CoramBAAF supports the return to the 26-week timeframe where achievable, as this promotes timely decision-making for children and their families. We are also clear that 12 weeks continues to be the minimum timescale required to achieve a robust, authoritative and analytical assessment of a prospective kinship carer.

The return to 26 weeks should not stop assessing social workers from having the necessary time to complete robust assessments of kinship carers, or stop prospective carers from having the appropriate amount of time and support to prepare for a life-changing decision to care for a child. Most crucially, it must not impact on care planning for children where living in a kinship family can be a loving and stable outcome.

## References

Family Justice Council (2019a) *Interim Guidance on Special Guardianship*, available at:

<https://www.judiciary.uk/wp-content/uploads/2019/05/fjc-sg-interim-guidance-pfd-approved-draft-21-may-2019-1.pdf>

Family Justice Council (2019b) *Timetabling and Timescales for Full Family and Friends Assessments*,

available at: <https://www.judiciary.uk/wp-content/uploads/2019/05/timescales-for-full-f-and-f-assessment-1-1.pdf>

Family Rights Group (2017) *Initial Family and Friends Care Assessment: A good practice guide*, available

at: <https://frg.org.uk/policy-and-campaigns/kinship-care/kinship-assessment-guide/>

McFarlane A (2022) *A View from the President's Chambers: November 2022*, available at:

<https://www.judiciary.uk/guidance-and-resources/a-view-from-the-presidents-chambers-november-2022/>

Public Law Working Group (2020) *Recommendations to Achieve Best Practice in the Child Protection and Family Justice Systems: Special guardianship orders*, available at: <https://www.judiciary.uk/wp-content/uploads/2020/06/PLWG-SGO-Final-Report-1.pdf>