

SUMMER 2019 Edition of the AFA Cymru Legal Newsletter

Welcome to the early summer issue of our newsletter. In this issue we are looking at the Family Justice Council's Interim Guidance on Special Guardianship and considering the implications of the guidance for practice in Wales. We also provide a brief update on the new fostering and adoption regulations.

The guidance on special guardianship, which we have distributed through our networks but is also widely available, forms part of the FJC's review of special guardianship. The review has not yet been completed and this is interim guidance pending the conclusion of the review later this year.

The guidance applies to Wales as well as England, although it is unfortunate that the Welsh regulations are not referred to. The status of the guidance, coming from the FJC and having been endorsed by the President of the Family Division, Sir Andrew McFarlane, means that all involved with special guardianship proceedings, including the judiciary, should follow it unless there are cogent reasons not to. It is anticipated that judges and magistrates will be expected to explain why they are departing from the guidance.

Those practitioners familiar with Wales' National Fostering Framework's good practice guidance for the assessment and support of kinship foster carers will see that many aspects of the FJC guidance are already contained in the Welsh guide. Although the NFF guidance was primarily concerned with fostering assessments, these cannot be separated from special guardianship assessments as so many local authorities undertake connected persons or unified assessments, undertaking special guardianship and fostering assessments concurrently.

The FJC guidance outlines its purpose as addressing cases where an extension to the statutory 26-week time limit is sought in order to be able to assess potential special guardians, and in particular where those potential special guardians are late but realistic 'emergers' to the proceedings. It specifically mentions that the guidance is to 'help start the change', meaning that the need for a full and robust special guardianship assessment should carry more weight than strict adherence to the PLO timescales.

The FJC sets out the principles already enshrined in our NFF guide:

- Early identification of potential carers

- The use of family group conferences / meetings
- The use of genograms
- Making good use of the relevant case law
- Assessments should be commenced promptly and be evidence based, balanced and child centred

What will be of major interest is that the guidance states 'in the event that a full assessment is undertaken it will usually require a three-month timescale'. This is significant, given that, at present, local authorities continue to be given short timescales for assessments. The three-month timescale reflects the statutory period for undertaking an SGO assessment outside of care proceedings, so aiming to ensure that all special guardianship assessments have the time to be carried out to the same high quality

Practitioners should now, therefore, expect to be given a three-month timescale for an SGO assessment. If that is not granted, the court should be clear as to why not.

Other guidance that is not in the NFF guide:

- Where proceedings have commenced, all parties (including the Guardian) should file and serve position statements in advance of the first Case Management Hearing;
- The Guardian's Initial Analysis / position statement should explicitly address the identification of carers and their contact details;
- These details SHOULD NOT be governed by the parents' approval or disapproval but be focused on the child's interests;
- The family and other agencies should seek to find the whereabouts of prospective carers;
- If a viability assessment is negative, the local authority must notify the subject of the assessment of their right to seek leave to be joined as a party to the proceedings or to make an application under s10(9).
- The assessment of proposed carers living in another country will justify an extension of the 26 weeks.

A further important issue is covered here – the necessity of establishing a relationship between proposed carer and child before the making of the order. The guidance states that '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'. This is very welcome as a principle as it takes account of a number of serious case reviews relating to the death or serious injury of children placed with special guardians when there was no pre-existing relationship:

- Where more time is needed to ensure the stability of a placement, it is likely that this will lead to an extension of the timetable. Delay should be proportionate to the welfare criteria as set out in s1(3) and 1(4);
- Where a viability assessment is positive, the parties and the court should, when taking directions for a full SGO assessment, consider, and if necessary, make orders relating to, the time the children will spend with the proposed carers.

Finally, the guidance addresses the issue of the legal status of a child where they have been placed with the proposed carers (under reg 26 Care Planning, Placement and Case Review (Wales) Regulations 2015 in Wales) as a temporary placement but, as an extension has been granted to the proceedings to undertake the assessment, the 16 week (plus further 8 weeks if necessary) will have elapsed. The guidance suggests an alternative approach to placement would be a child arrangements order plus interim supervision order to provide support to the placement, particularly during the transition. This again is a major shift in thinking about the assessment and timetabling for these assessments, acknowledging that there should be a pre-existing relationship and the transition should have taken place if the child had not already placed.

If practitioners find themselves in the position of having to justify the three-month assessment period, we would refer you to the NFF good practice guide where, on p14, there is a list of factors which should be brought to the attention of the court. This is a brief synopsis:

- These are the most complex of all assessments – far more complex than mainstream fostering or adoption assessments, which are rarely completed in less than six months;
- Families need time to assimilate information and plan accordingly;
- A relationship of trust needs to be built up with the assessor in order for the proposed carer to be able to explore their feelings of doubt and anxiety as well as look forward to the positives;
- Checks and references are compromised by short assessment periods as referees have to be interviewed before the assessment has gained any depth;
- Time is needed for some family members to be able to demonstrate a capacity to change elements of their life in order to be able to care for the child. A short timescale deprives them of their chance to prove that capacity.

NEW FOSTERING AND ADOPTION REGULATIONS – UPDATE

Fostering

All of the new fostering regulations came into force on 29 April. We have noticed, through our advice line, that there continues to be some confusion about which regulations apply to which fostering service providers.

So far as the regulation and inspection regulations are concerned, there are two distinct sets of regulations. For LA FSP's the Local Authority Fostering Services (Wales) Regulations 2018 apply. There is a code of practice to accompany the regulations. Local authorities do not need to have a 'responsible individual' but have a 'LA manager'. The role of the RI is required for independent FSP's only and their regulations are set out in the Fostering Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019. There is statutory guidance to accompany these regulations. See the Winter edition of this newsletter for more details.

The new two stage process for assessment is contained in the Fostering Panels (Establishment and Functions (Wales) Regulations 2018. These regulations apply across the whole sector.

Adoption.

The regulation and inspection regulations for adoption came into force on 29 April. There are two sets of regulations, one for LA adoption agencies and one for VAA's – see the Spring edition of the newsletter for these details.

The only regulations still to come into force are the Adoption Agencies (Wales) (Amendment) Regulations 2019, which introduce the two-stage assessment process for adoption. These regulations still need Ministerial approval, but we understand that they will come into force in the autumn.

Every region and VAA is having training on the new regulations in September. NAS has also commissioned AFA to write a good practice guide for the new two stage process for assessment and this will be ready for the autumn, along with the new Welsh PAR available from CoramBAAF.