

# Special Guardianship Orders

## Practice Guidance

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This guidance is supplemental to the Departmental procedures and National Statutory Guidance, it details the process by which Special Guardianship Orders ( SGO ) are issued and outlines the expectations in respect of the role of the Social Worker.

Both in terms of managing the process and assessing families for an SGO, it is acknowledged this area of work is complex and involves a reliance on Social Workers analytical skills and depth of understanding of the challenges that such placements face. An SGO is a permanence outcome and has to be treated in approach with the same detail and thoroughness as other permanency options such as Adoption. This additional guidance aims to assist supporting the practitioner in remaining focused upon the depth of the assessment required and asks you to consider what you are looking at in respect of your analysis as to the resilience of the placement.

The challenges and complexities the court and practitioners have faced has led to a National Review as to how SGO's are utilized. Whilst we await further additional guidance, CAFCASS and ADS have emphasized the need to be rigorous and not compromise or shorten assessments to ensure the suitability of the placement long term. Indeed to ensure the placements assessment is not compromised, Court should be assisted as to what is required to ensure Children's Best Interests are safeguarded by the provision of such in depth evaluation of placements.

The approach as defined above is supported and endorsed by Nottingham City Council. The council recognizes the value of SGO's as a positive permanency option and is an integral part of the options that should be explored to meet the targets as set in the Council's manifesto for permanent placements to be achieved for 40% of our children in care. However the council also requires that we are confident in our plans and assessments which are sufficiently robust to assure all parties that each child's needs and wellbeing are safeguarded in the future.

## Summary description of a Special Guardianship Order

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To confirm, a Special Guardianship Order is a **Private Law** application that undertakes or conveys the following principal functions to a Special Guardian.

1. It confirms a placement with a named Special Guardian(s) as a long term placement up to the age of 18.
2. It provides the Special Guardian(s) with Parental Responsibility (PR) and can exercise that PR on a day to day basis and to exercise that PR to the exclusion of all others.
3. It is also provided with the expectation of a maintained link with birth families and specifically parents.

There are limitations on the PR conveyed. A Special Guardian can't change a child's name, provide consent for a child to be adopted or live outside of the country for longer than 3 months without leave of the court.

Remember **Applications** can only be made in the following circumstances

- Where a child has lived with a Local Authority foster carer for a year
- A child has resided with a carer for 3 out of the last 5 years
- Where a carer has been a guardian
- Where the child has lived with a relative for a year
- Or there is permission from the court for an application to be made

## Why so challenging ?

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Guidance as to how we approach practice in respect of SGO's is rapidly changing and developing in line with new research, legislation and case law, contributing to the complexity of the situation.

It was not intended at its inception that so many extended family placements would be considered and approved as SGO's. The majority of applications were anticipated to be drawn from foster carers with long term placements and for securing permanency for Unaccompanied Asylum Seeking children and young people. The landscape over time however is very different.

The introduction of the revised Public Law Outline has emphasized the importance of 'front loading' work so that thorough assessments are completed before care proceedings are issued. Where 'front loading' has not occurred, the revised court

time scales have placed additional pressure on services in order to complete assessments in very short periods of time, and therefore quick decisions being made. This can mean decisions are made in compromise or without the full information, which recent studies have identified, can cause problems later on.

The case of *Re v B-S* set out the court's expectations as to what should be explored within legal proceedings and how practitioners are required to evidence that they have fully explored all options available to the court. This can mean multiple assessments and a range of assessment types which have to be concluded within the restricted timescales. Local Authorities can no longer present an evaluation and recommendation without evidencing in detail all realistic options having been explored and analyzing the pro's and cons of each.

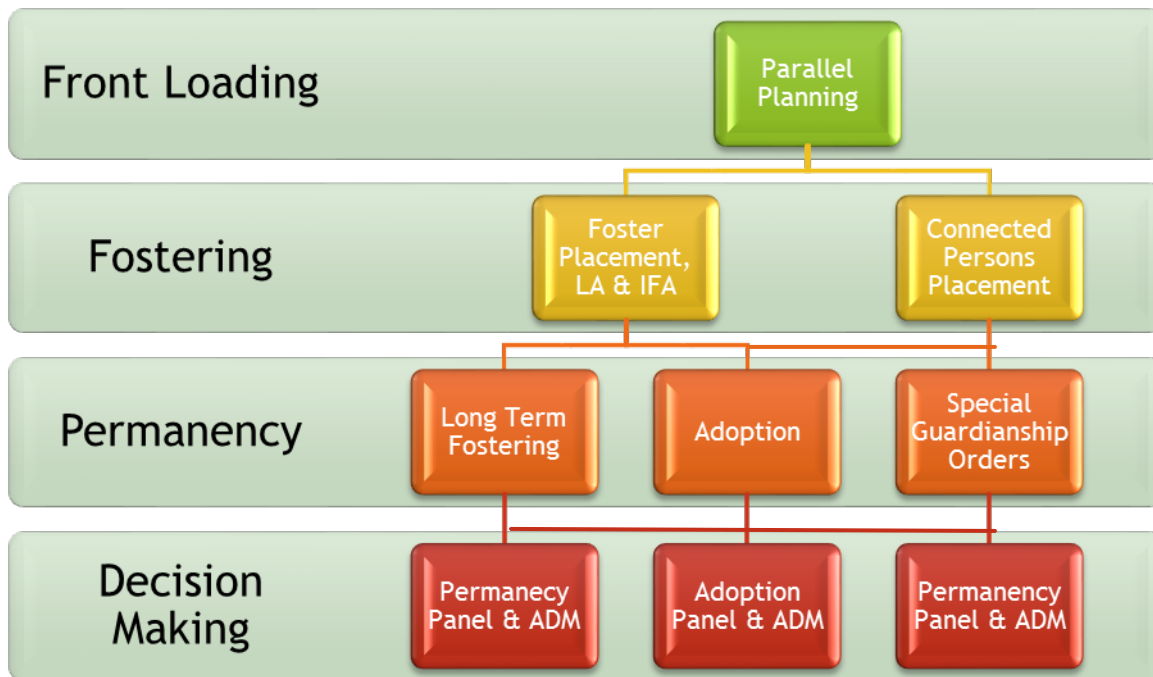
In addition with the application of the Human Rights Act to case law, Mr Justice Munby has recognized that the use of Adoption against parental agreement is a very Anglo-centric concept and something within the sphere of the European Legal System, is recognized as 'Draconian' and as such should only be used in exceptional circumstances. As such whilst practitioners may view SGO's as one of many options, it has meant an increasing number of younger children going to SGO. This is causing concern within Government and emphasizes that in terms of assessments and evaluations, the right decisions have to be made by a robust evidence based assessment.

## Where does Special Guardianship Orders Sit in Child Care Process

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To clarify what the expectations are in managing the evaluation and exploration of the SGO's, we need to understand the position of the SGO assessment within the child care system.

Due to condensed timescales it is very easy to get confused which part of the process a practitioner is in and therefore the lines of activity becomes confused. To assist it is suggested to consider that work in this area needs to be completed in turn. The information and work undertaken can inform the next stage. Work should follow the process as shown below.



N.B ; SGO also includes CAO's

In light of the above context within which practitioners are working, having a clear understanding of where they are at in the process should assist in keeping clarity as to the actions being undertaken.

## Front Loading

Front Loading is more essential than ever. Work needs to be undertaken not just in working with parents to prevent a breakdown of family life and reduce the risk of harm to children and young people, but also to look at the wider family as a contingency option, in essence starting parallel planning at an early stage. The involvement of wider family and their ability to support the family, should always be explored and attempts to engage should be made, to build resilience around the child, and reduce risk whilst remaining in the family which is essential in good practice.

In doing so, however, we should also consider exploration with the extended family within contingency planning. Understanding where family members are at, what they are willing to do and what the parents are thinking about in respect of the possible options, assists the 'front loading' process and where agreement is reached contributes by allowing to progress viabilities prior to a crisis. Parents and family should understand, that the nature of contingency discussions are just exploratory and would only be progressed if they are likely to reach fostering standards requiring further assessment if the child is immediately placed. If family separately wishes to

be considered as a permanent option then they also need to be assessed in depth in respect of being able to meet the child's needs. Family members need to understand that being part of an assessment process may lead to a negative outcome and approval as a permanent solution is not automatic.

## Fostering

When an alternate placement is required and the Local Authority has to intervene a placement with an extended family member or connected person assessed as viable and safe, is placed under Connected Persons guidance and requirements. The decision and assessment is easier where through contingency planning, checks and viabilities have already been undertaken. However in a crisis checks and viabilities will quickly have to be completed before a decision can be made to agree to a placement.

*(please follow connected persons procedures.)*

Whilst you may have a clear view that the placement is with a view to SGO in the first instance where a child is placed pending assessment, or the granting of an SGO, the placement is therefore in accordance with Connected Persons processes.

## Permanency

It is only within this area of planning that consideration of an SGO is valid. It needs to be explored in the context of other permanency options. As such with recent changes in guidance, there are ultimately four permanency options available.

- Rehabilitation / No Order
- Long Term
- Special Guardianship Order
- Adoption
- Child Arrangement Order

With or without Supervision Orders

The court will expect all options to be placed before them for consideration. The Assessment and ongoing discussions with the family will be based on exploring these options and make a determination as to the best way forward, within the context of the Best Interest for the child. However whilst a practitioner may put forward an assessment, this should be subject to scrutiny and challenge before it is finalized and confirmed as the Local Authority recommendation.

## Decision Making

The Local Authority has a responsibility to ensure it is reflective and quality assures any assessment and recommendation based on findings prior to it being shared. As practitioners we must explore all elements that should be considered. The opportunity to discuss with other experienced professionals at the Permanency Panel

will support a good standard and Evidence Base for an arguable position in Court. Further any such proposal needs ADM approval to ensure the Local Authority are confident that the judgement is collectively owned and resources committed are correct.

#### Areas to consider in an Assessment.

This Order is embedded in the Children's Act so recommendations will need to address the **Best Interests** of the child. Therefore the child's welfare remains **Paramount**, any analysis will have to demonstrate how the Local Authority recommendation meets that requirement. To do so in considering Special Guardianship we have to address key themes in evaluating the outcome, as opposed to alternate realistic options such as Adoption. To do this effectively the Local Authority consideration has to be robust, and therefore we have to understand what the SGO should deliver if works well. We therefore need to consider the following.

SGO should:

Address difficulties for older children who would struggle with Adoption

- Maintain good relationships with birth family and parents
- There should be a manageable relationship between parents and Special Guardians
- Facilitate more than occasional contact with parents
- Protect a child's interests where a child stands to inherit substantial finances
- Maintain cultural links

Within this context for an SGO, assessment and planning should collaboratively explore issues within the context of the process being ;

- An assessment process which is a learning process where all should be engaged with the enquiries required and learn about themselves, the child and the circumstances they will be facing in the future
- Work in the spirit of partnership
- All discussions should be within the context of being centrally focused upon the child, their future and upbringing
- That those exercising PR have a clear sense of authority.

It therefore raises the following questions that have to be answered and integrated in the commentary of the report and most importantly the analysis. These questions can form the basis of a checklist, to support whether we have the right information.

The Question	What we are able to show
<p><b><u>The Child</u></b></p> <p>What is the Child’s experience and what has been the impact on development ?</p>	<p>A clear profile of the child’s experience in the family and the deficits in their experience to date.</p>
<p>With the experience the child has and the deficits, what is the likely impact on needs in the future and current prognosis ?</p>	<p>Define the prognosis for the child and what will be required to compensate, from the parenting and environment to overcome the difficulties and reach full potential. Projection should be up to the age of 18.</p>
<p>What are the child’s wishes and feelings, their understanding of an SGO and their fears?</p>	<p>Define the child’s views, what will worry them, including living with relatives and contact with parents. Do they feel safe ?</p>
<p>What relationship does the child have with the prospective carer, what perception did the carer have regarding their care and what support did they offer?</p>	<p>Defining the relationship and level of trust between child and carer. Cross referencing the carer role and participation in parents care of child and whether there was intervention.</p>
<p><b><u>The Prospective Carer</u></b></p> <p>Does the carer have the environment that can facilitate and can sustain the child comfortably to an acceptable standard to the age of 18, and with any necessary support to sustain the young person?</p>	<p>Ensure the child has access to sustained facilities to support growth and development</p>
<p>Is everybody resident in the household supportive and understand the implications ?</p>	<p>Outlining whether there are challenges or differences in view that could underline the long term nature of the SGO</p>

<b>Will the extended family network support the ongoing care and development of the child ?</b>	Outline any cracks or inconsistencies that may affect the child long term
<b>Do all necessary checks and references are taken up, including professional experiences of the family in respect of own children show no safeguarding concerns?</b>	Explore suitability and outline any issues that affect capacity or compromise the safety of the child and / or impede development.
<b>Utilizing the child's profile and needs, do the carer understand what is needed and through assessment demonstrate an ability and understanding to address deficits positively ?</b>	Define whether carer understand role and actions they need to take, are naive or not have the capacity to meet the child's needs.  It will be important to consider what would need to be put in place to make it work
<b>Do they have an understanding of the concerns with regards to parenting provided so far, and what their role will be long term?</b>	Should outline whether carers can understand what the deficits are in the original parenting and what their role is in order to protect the child from such experiences.
<b>What is their relationship with the parents, why things have gone wrong, what did they do to prevent and what they think of the parents now?</b>	Should outline what perceptions of parents are, whether they are minimizing concerns or will not have the capacity to be strong and manage contact with parents
<b>Do they understand the level of responsibility in managing contact with parents and the child's expectations?</b>	Should be able to outline how realistic and whether they have the capacity to manage contact and understand the decision making required.



<p><b>Where do they think the strengths and weaknesses in their family make up and what assistance they think they need. (Not just now but until the child is 18.)</b></p>	<p>Should outline where the family is at and how realistic they are with regards to the stresses and strains over the years and their coping strategies.</p>
<p><b>Is there difference in attitude between either parent</b></p>	<p>Consider the impact if there are differences. E.g. blame father for all compromising approach to him and his family and minimize the mother and have an optimistic perception of ability to change if leaves father.</p>
<p><b>How will they manage and what is the contingency plan if carer relationship breaks down</b></p>	<p>Ensure there is an understanding of responsibility to the child should relationships change over time. Have they thought this through and that their commitment should remain, regardless of personal circumstance. What is their support network.</p>
<p><b>If foster carers what has been their experience to date and what have they managed. Any weaknesses identified that could affect the placement</b></p>	<p>To ensure that any history or themes of behavior previously highlighted is considered as to the potential impact on a placement</p>
<p><b>What do other placements in situation feel about proposals. What are the carers intentions, do they wish to continue to foster and the impact upon SGO role.</b></p>	<p>If carers continue to foster cannot ignore dynamics and implications of the presence of other young people. Further if returning to fostering after a time or carrying on fostering will impact on a placement. Understanding the impact is essential on them and the children.</p>
<p><b>What is their motivation for making a commitment to the child and young person in question</b></p>	<p>It should assist in understanding levels of commitment, are they focused on the child what they think will be achieved by supporting the placement</p>

<p><b>What are the prospective carer experience of parenting and how does that affect their own parenting approach</b></p>	<p>This will contribute to understanding parenting approach and standards and open a line questioning as to what the child will experience</p>
<p><b><u>The Parents</u></b>   <b>Do we have a clear profile of each parent, their behavior and key themes that a guardian would need to be aware of ?</b></p>	<p>We know the challenging behavior and what the child would need to be protective of. E.g. threatening behavior or lying, minimizing etc</p>
<p><b>What are the parents views with regards to an SGO and that it is a plan for permanence ?</b></p>	<p>Do they have a realistic understanding of what is asked of the family or is there is a perception that this is temporary ?</p>
<p><b>What are the perceptions of the prospective carers and their relationship?</b></p>	<p>Understand the dynamic and whether they feel they are able to work in partnership</p>
<p><b>What is the prognosis in terms of ability to change and anticipated behavior that the carers would have to deal with ?</b></p>	<p>Should be drawn from the parenting assessment and applied to the challenges of management in the future.</p>
<p><b>How will the parents support the placement and the needs of the child?</b></p>	<p>Should highlight the degree of partnership possible and understanding of the role in supporting the stability of the placement</p>
<p><b>What does the parent think of the SGO applicant's ability to meet the child's needs.</b></p>	<p>This may identify examples or issues within the family that have not previously come to light and can be further explored</p>

The questioning exploration of parenting as recommended above provides valuable information for the assessment. The findings should be utilized to test out as part of the assessment. Observations, for example, should be utilized to observe the prospective carer in interacting and managing the child/ children. Where possible we should check and cross reference examples given by the applicants demonstrating

their suitability. Ensuring that the assessment, is based on confirmed evidence and not just self reporting.

In completing the analysis we should always be cautious of making factual statements, which can create a false sense of confidence in the applicant.

As an example ;

Statement ; Applicant does not have children but has cared regularly for nieces and nephews.

That is a self report.

How do we know? who says? and what does the niece and nephew say?

A more valuable statement ;

Applicant has not had day to day child care experience, not having children themselves. However, the applicant reports however, caring for her niece and nephew regularly. The brother to the applicant reports that that is the case and detailed a regular pattern of care ranging from a few hours to days and overnights. The children report a positive experience.....etc.

## Summary

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These core questions and fully evidencing the situation will inform a practitioners judgement as to the potential for the SGO to be successful for the child long term. The conclusions reached should be presented as a summary. This summary, should detail the strengths and weaknesses of the proposed SGO, as against the strengths and weaknesses of other possible options ,leading to a an analysis and recommendation. The age of the child should inform what is felt possible and sustainable and what is not.

The court requires that the practitioner will also comment with regards to deficits whether these can be supported by the provision of a Support Plan. If that is not sustainable or thought to prop up a difficult situation only, as opposed to build resilience, then the practitioner should say so.

If support can assist in developing resilience, the practitioner should outline a proposed support plan and detail what is to be achieved. This may be in the context of one off payments for items, a child in need plan or integrated into a Supervision Order. If there is no support to be offered reasons must be given.

