

Association of Lawyers for Children

Webinar 05.08.20

Public Law Working Group : Special Guardianship Order Report (Published 15.06.20)

1. Past attempts to introduce guardianship orders – not successful
(Guardianship of Minors Act 1971, Guardianship Act 1973 & Children Act 1975)
2. SGOs introduced as s.14A-14G of Children Act 1989 by s.115 Adoption & Children Act 2002 - came into effect 2005 – 15 years ago
3. SGO vests PR in respect of child in the SG – importantly – to the exclusion of any other person who holds PR (e.g. mother or father)
4. Key feature of SGO is to secure permanence for the child
5. The Public Law Working Group – consisting of professionals from all sectors of the child protection and family justice systems has investigated many aspects of family law and made recommendations for change. One of these areas is SGOs. I will speak about some of the key recommendations for change in respect of SGOs in the presentation.
6. An issue – been seen at the CAO - live with or spend time with orders (previously residence & contact) end of the spectrum of court orders and not adoption end of the spectrum. This is wrong: SGO should be viewed towards the adoption end of the spectrum. Albeit SGO does not sever status as a parent (cf adoption) they are designed to deliver permanence for the child

7. Principal issues – where change can be introduced relatively speedily
 - Thorough & comprehensive assessments & reports to court
 - Role of proposed SGs in family proceedings. Join as a party or ensure fully informed and engaged with the assessment & court process
 - SGO support plans must be thorough & comprehensive
 - Based on child's and proposed SG's lived experience of caring for the child
 - Court's powers if support plans considered to be inadequate
 - Only exceptionally make SGOs before child has lived with the proposed SG (e.g. grandparents)
 - Management of contact to parents/carers – LA support in arranging, managing and/or supervising contact

8. Principal issues - which require additional resources and/or funding from the government
 - Training of & preparation for proposed SGs (cf prospective adopters)
 - Advice & guidance for proposed SGs and SGs (cf ditto)
 - Public funding for proposed SG

9. Thorough & comprehensive assessments

- Likely to need at least 16 weeks to complete
- Take these cases out of 26 week rule to reduce pressure to conclude too quickly/early
- Importance of lived experience of child and proposed special guardian as a basis for assessing the placement
- Taking on SGO a life changing experience for the child and the proposed SG
- Time for all to reflect to ensure this is the right placement for the child and for the proposed SG
- Change of culture in assessment process – engage with, support and work alongside families and proposed SGs

10. Role of proposed SGs in court proceedings

- Vital that proposed special guardians are engaged with the assessment process and court proceedings
- They must be supported and kept fully informed at all times
- In some cases – e.g. where a party contests a positive SGO assessment or there is a substantial issue about the adequacy of the SG Support Plan – it may be appropriate and necessary to join the proposed SG as a party to the court proceedings
- No proposed SG should be left feeling ill-informed about the assessment process or the court proceedings or not understanding what is happening or feeling under undue pressure to agree to be a SG for a child
- A thorough assessment may for some feel intrusive into their private lives – hopefully a sensitive approach by SWs will remove or reduce any sense of unjustified intrusion
- Remembering that a thorough assessment to ensure the right result is achieved is in the welfare best interests of the child and to the ultimate benefit of the SG

11. SGO Support Plans

- The key to a successful placement is an individually created SG Support Plan which is tailored to the needs of this child and of this SG. Generalities of support are to be avoided - one size does not fit all
- A good SGSP will set out in detail the support a LA will provide to the child and to the SG not just in the short term but in the long term and with particularity for the foreseeable future
- The court should be alerted to deficiencies in the support plan by the proposed SG, the parents and/or the CG
- If a support plan is considered by the court to be deficient, the court should decline to make the order until these are remedied
- If SGSP is detailed and robust, it should rarely, if ever, be necessary or appropriate to make a SO alongside a SGO

12. Contact

- Research indicates that managing contact is one of the principal challenges facing most special guardians
- The SG Support Plan and/or the court order must be plain about the obligations of the LA to arrange, manage, support and, if needs be, supervise contact with parents/other former carers
- Where there is a large measure of agreement about contact, a time spent with order (a contact order) may not be necessary – the agreement can be reflected as a preamble/recital to the order
- Where there is little or no agreement, a contact order is most likely to be necessary. It should be clear about when, for how long, where and with who present. If to be supervised, it should be clear about who is to supervise and for what purpose
- The extent and frequency of contact will depend on the needs of this child, the nature of their relationship with their parent(s)/former carer(s), the risks, if any, posed by the parent(s)/former carer(s) and the practicalities of the arrangements (ie the child's and/or the SGs other daily/weekly commitments)

13. Children & Young People's Views

- It is essential that the views of the child or young person are communicated to the court
- The older and more mature the child/young person, the greater the weight the court attaches to their views
- Usually communicated by the CG
- For some children/young people it is important to meet the judge making the decision about their lives
- In these cases judges are invariably willing to see them at a meeting at court with their CG and/or the children's solicitor present

14. Training of & preparation for proposed SGs

- It is recommended that the government makes provision, as with prospective adopters, to enable proposed SGs to receive training and preparation before taking on the important and life changing role of caring for a child on a long-term basis
- These steps are important to ensure the effectiveness, stability and security of the placement for the child

15. Advice & guidance for proposed SGs and SGs

- Adopters have the support of an adoption support advisor. Many consider the same advice and guidance should be made available to SGs

16. Public funding for proposed SG

- It is recommended that the government should consider making public funding (ie Legal Aid) available to proposed SGs during the pre-proceedings phase and during proceedings
- Most especially if the proposed SG is joined as a party to the family law proceedings

17. The Role of the Court

- Use of simple and accessible language which can be understood by non-lawyers
- Judges must take care to ensure the proposed placement with the SG is in the welfare best interests of the child in the long term
- Requires adequate time for assessments and preparation of individual support plans
- Confidence that the proposed SG can provide the child with a loving, secure and permanent home which meets the needs of the child is essential to the court concluding a SGO is in the best interests of this child
- Judges must be satisfied appropriate support will be provided to the child and to the SGs by the LA before making the order
- If considered inadequate, refuse to make SGO
- SG Support Plan to be appended to the SGO order
- Contact order – when appropriate? If agreement, reflected in recitals (agreement set out on the face of the order). If no agreement or clear tensions between parents/carers and proposed SGs, contact order setting out in clear terms the time the children are to spend with a parent or former carer

18. SGO Best Practice Guidance

- Appendix E of PLWG SGO Report
- Signed up to by Family Justice Council & others
- Worked alongside FJC's SGO Working Party
- Joint drafting of the BPG
- The BPG stands as the FJC's response to the Court of Appeal's request in Re P-S [2018] EWCA Civ 1407
- Endorsed by the President of the Family Division

19. Conclusions

- SGOs are an extremely important and effective order
- Care must be taken to ensure a SGO is only made where it meets the needs of the child
- Therefore assessments must be thorough and comprehensive
- Proposed SGs must be fully informed and supported throughout the assessment process and the court proceedings
- A SGO must be accompanied by a robust and detailed SG Support Plan
- Contact must be arranged, managed, supported and/or supervised by the LA
- The role of the LA in advising and supporting the SG does and should not end with the making of a SGO

Mr. Justice Keehan

1st August 2020