Guardianship of Infants (Amendment) Bill 2025

About us

Barnardos provides frontline services to children and their families. We work with children and families who are affected by traumatic life situations such as poverty, abuse, parental mental health challenges, neglect, separation, bereavement and parental addiction. We offer a range of early intervention and targeted services in over 50 service locations, in family homes, schools, early learning and care settings and communities.

Introduction

Head 2

(1) Where a guardian or parent of a child has been convicted of an offence:- (a) of murder or manslaughter of another parent or guardian of the child; or (b) of a serious offence resulting in the incapacitation of another parent or guardian of the child and having regard to the circumstances mentioned in subsections (14) and (16) the Child and Family Agency, within 6 months of the person being so convicted, shall apply to the Court for an order that - (i) the guardian or parent so convicted be removed from office and that the Court may appoint another person as a guardian of the child, or (ii) that the guardian or parent so convicted be confirmed as [the] [a] guardian of the child.

Barnardos is supportive of the proposed legislation and the efforts made by the Department of Just to address such a serious issue. The retention of guardianship rights for parents who have committed offences under this Bill can have untold long term negative effects on children. We are aware, from experience, of the damage that remaining in the guardianship of the surviving parent can have on a child's wellbeing, impacting their health and education, where they are housed and who they live with. It is all encompassing and ultimately have a life long impact. This is in addition to the trauma they will have faced as a result of their parent being killed, compounding this further.

(2) Where a guardian or parent of a child is convicted in a manner as set out under subsection 1 and thereafter dies the Child and Family Agency, within 6 months of the death of that person may apply to the Court for an order that a guardian be appointed for the child.

The six month time frame seems relatively sensible time line. However, ideally it will happen as quickly as possible, and it will be important that in most cases we would hope it is well within that time frame given the impact the parent remaining as guardian could be playing on the life of children. For example, while a child waits for the guardianship rights to be

suspended they could be prevented from staying with other family members for example or from getting certain forms of support in the aftermath of their parent being killed. Given the complexity involved and the need to understand the surrounding circumstances and best interests of the child we appreciate that setting a shorter statutory time frame might not be realistic at the moment.

(3) The Court may extend the periods provided in subsection (1) or (2) within which an application may be made but shall only do so if it is satisfied that— (a) there is good and sufficient reason for doing so, and (b) it is in the best interests of the child to do so.

The safety mechanisms built in would appear to be adequate and completely appropriate, particularly that it can only be extended where it is in the best interests of the child. It will be important that the court is in a position to understand and be in a position to properly consider the best interests of the child involved as quickly as possible without jeopardising standards, which may require the assistance of external professionals, particularly in the way of guardian ad litems.

It is important, that where appropriate, judges will be able to consider the voice of the child when determining their best interests. It most circumstances it will be an extremely traumatic time for a child, however, they will generally still be able to be in a position to voice their views, discuss their experiences and state what they would like to happen going forward.

(4) Where, on an application for an order under subsection (1) or (2) the Court determines that it is in the best interests of the child, in accordance with section 3 [of this Act] and with regard to the factors and circumstances as set out in section 31 [of this Act], to remove a guardian, appoint a guardian, or confirm a guardian, the Court shall make the order accordingly

Again, we are happy to see that the section is being led by the best interests of the child.

(5) Where the Court makes an order under subsection (4), the Court shall give such directions and make such orders as it thinks proper regarding the custody of the child and the rights of access to the child.

It cannot be overstated the impact that custody and rights of access to a child can have on a child's life. It entirely affects their overall wellbeing and as such should always be guided by the voice of the child and their best interests.

(6) When making an order under subsection (4) the Court shall have regard to the relevant provisions of sections 11, 11A, 11B, 11E and 12A [of this Act] as appropriate and such an order may— (a) specify the period for which it shall remain in effect, (b) impose such conditions relating to the periodic review by the court of the order as the court considers necessary for the best interests of the child concerned, and (c) provide for such additional matters as the court considers necessary in the best interests of the child concerned. (d) provide that the guardian so removed by an order under subsection (4) be prevented from

making an application under sections 6A, 6C, 6F, or 8 [of this Act] [in respect of the child named in the order under subsection (4)]

It is positive to see that there is provision placing a proactive onus on the court to monitor the case, and make sure it is reviewed in regards circumstances that might change over time, such as outlined above in relation to the best interests of the child and the welfare of the child. We appreciate, throughout the work that we do, that things can change over time for children and it is important that this is reflected in decisions made by the court.

(7) Where the Court makes an order that a guardian be appointed for the child - (a) in addition to the parent concerned or (b) in the place of the parent concerned or (c) in addition to any other guardian or (d) for any other reason which seems appropriate to the Court, the Court shall appoint as a guardian - (i) a person who is a relative of the child who is suitable and has agreed to discharge the rights and responsibilities of a guardian, or (ii) a person who is not a relative but in the circumstances is suitable and has agreed to discharge the rights and responsibilities of a guardian.

Ideally children can remain in their own homes, with their siblings, and ideally around them family members best positioned to support them.

(9) In deciding whether to make an order removing as guardian of the child the person concerned, the Court shall have regard to all the circumstances, including in particular— (a) the best interests of the child in accordance with section 3 with regard to the factors and circumstances as set out in section 31 [of this Act], (b) the damage caused to the child's welfare as a result of the violence inflicted on the child's other parent or guardian, (c) the extent to which that damage would be aggravated by permitting the person concerned to remain as guardian of the child, (d) the views of the child, to the extent possible given his or her age and understanding, (e) the number of persons, if any, who are guardians of the child concerned, and the degree to which those persons are involved in the upbringing of the child, and (f) the availability and suitability of any other person who would be appointed by the Court as guardian of the child.

We think this is a sensible approach and particularly appreciative that the best interests of the child are put first and foremost. Given the trauma they will be facing as a result of their parent dying it is vital that their best interests are put first and their welfare. In most circumstances they will only face further trauma remaining within the guardianship of the other parent.

There also appear to be adequate protection to prevent cases occurring where there may have been certain circumstances surrounding the death whereby removal of guardianship rights should not occur. For example, we are aware of circumstances in which parents have killed the child's other parent after facing years and years of considerable domestic violence. In those circumstances removing guardianship rights would not have been in the best interests of the child, and would not have been what the child would have wanted.

(10) The court may, if satisfied that having regard to the special circumstances of the case it is necessary in the best interests of the child to do so, appoint a guardian ad litem for the child.

Given the vast experience of our guardian ad litems we believe that many of these cases will involve complicated circumstances, and the experience and involvement of a guardian ad litem would be extremely helpful in recognising and realising the best interests of the child. They will also be in a position to support the child during the process and helping them to understand what is happening at the time and going to happen in the future. They can do so in an extremely child sensitive and trauma informed manner.

(11) Without prejudice to the generality of subsection (10), in deciding whether to appoint a guardian ad litem, the court shall, in particular, have regard to— (a) the age and understanding of the child, (b) any report on any question affecting the welfare of the child that is ordered by or furnished to the court under section 32 (1) (b), or under section 47 of the Family Law Act 1995, (c) the welfare of the child, (d) the views of the child, to the extent possible given his or her age and understanding, and (e) any submission made in relation to the matter of the appointment as a guardian ad litem that is made to the court by or on behalf of a party to the proceedings or any other person to whom they relate.

This list seems to include the most relevant things that the court should take into consideration. In most instances we believe that the child and the court will benefit from the appointment of a guardian ad litem, given the likely complexity and trauma involved.

(12) If having regard to the gravity of the matters that may be in issue or any other special circumstances relating to the particular case, it appears to the court that it is necessary in the best interests of the child that the guardian ad litem ought to be legally represented, the court may order that the guardian ad litem be so represented in the proceedings.

It can be exceptionally important for guardians to be legally represented, placing this within the legislation is therefore vital.