



Family Justice Council

Podcast transcript

Enhancing the participation of children and young people in family proceedings

Narrator

This is a podcast recorded at the Family Justice Council's debate on Enhancing the Participation of Children and Young People in Family Court Proceedings on Monday 20th October 2008 at Inner Temple.

Nick Crichton, District Judge and Family Justice Council member explained what the debate is about.

Nick Crichton

This is the 21st Century and I think we are becoming ever increasingly aware of the importance of taking children's and young people's views on issues that affect them. There are an increasing number of people who are involved in the family justice system, judges, Cafcass officers, people who have to talk to children in connection family proceedings who are recognising that some children and young people themselves want to have a greater connection with the proceedings. The Family Justice Council feels that it's a good time to have this debate and to think about the issues as to whether it is possible to involve children more, in a way that's meaningful, and how we should go about achieving it.

Narrator

The debate was chaired by The Right Honourable Sir Mark Potter, President of the Family Division, Head of Family Justice and Chair of the Family Justice Council.

Sir Mark Potter

Well, ladies and gentlemen I'm delighted to welcome you all to this debate and panel discussion in the Spartan surroundings of the Inner Temple. The Family Justice Council is unique in its inter-disciplinary nature. It brings together representatives from the many different professions involved in the family justice system and the work that the Council's Voice of the Child group has done in producing the paper which has led to this event, and which I'm sure you've all seen, is an excellent example of that inter-disciplinary co-operation.

Now, the aim of the Council has been to bring the debate to a wider audience and this evening will provide an excellent start to that process. You'll hear first of all from two young people, the two Rebeccas sitting to my left, but you'll then hear from Mr Justice Mark Hedley, who's a High Court Judge of course and Anthony Douglas the Head of Cafcass who will support the proposal that judges should talk to children and young people in the cases they are deciding. And then from Anthony Hayden QC and Alison Paddle who's the Chair of NAGALRO, who won't be saying 'oh no you shouldn't' in those sort of terms, but they will be sounding notes of caution about the process.

Tonight we've got an excellent opportunity to hear it first hand, from the two Rebeccas - Rebecca Musgrove and Rebecca Munson - who've been through the family justice system and can tell us how they felt about the experience. We're very grateful to them for agreeing to come and talk to us this evening, so without further ado I will hand over to them.

Rebecca Musgrove

Good evening ladies and gentlemen and thank you for inviting me to participate in this most prestigious event. I was involved in court proceedings when I was seven years old and my parents were divorcing, the second when my grandmother applied to look after me. I joined the Cafcass Young People's Board in the Summer of 2006, prior to being involved with the court process for the second time.

The experience I had inspired me to take action and to make sure that the voice of the young people involved in these court cases is not just a priority, but a necessity.

Some young people, including myself, felt that my views were listened to and highly valued, but I would not have liked to think that if I had wanted to meet with the judge that I was denied of doing so. It can help a young person to know that the correct message is being passed on and not another game of Chinese whispers gone wrong. This way the young person feels more involved and that decisions are not being made without consultation.

Rebecca Munson

My name is Rebecca Eloise Munson. When I was 11 I went into foster care and when I was 14 I was adopted. I'm here today as a representative of the Cafcass Young People's Board to tell you why I believe children and young people should have the opportunity to attend court and to be heard, in person, in family court proceedings where any decisions taken will affect them directly.

I would like to start by saying that I find it astounding that this issue is even being debated. Why? Because it is a violation of every child and young person's human rights for them to not have the opportunity to express their views directly. Article 12 of the Convention of the Rights of the Child states that every child and young person has the right to express their views freely about anything that affects them. The child or young person's views must also be given weight depending on their age and maturity and finally the child or young person has the right to be heard and express their views directly in all decision making processes, including court hearings.

Narrator

The pro-side of the debate, Mr Justice Hedley and Anthony Douglas, put their argument forward first.

Mr Justice Hedley

These cases are about the children themselves. They are the ones who are fundamentally affected by it and therefore it is right that they should have a say to the extent to which they participate in those proceedings. It seems to me that if children want to participate in proceedings then we need to have a very good reason why they shouldn't participate as they want to. And if we do have a very good reason then it needs to be explained to them what that reason is, in a sufficiently open minded way that if they come back with something else it will be rethought.

At the end of the day, the court obviously runs the proceedings and determines what happens and how, that is the way the system works. But within that it is important to remember whose lives are at stake, whose futures are affected and to give every scope within it for accommodating the way that they will feel most comfortable that their cases have been decided. They will live with the results, we don't.

Anthony Douglas

I just wanted to say a little bit about the groups that we deal with. 50 percent of children in public law proceedings are under six and that in itself, although we have some quite sophisticated tools now to communicate with young children, presents quite a challenge. Many children and young people have serious communication difficulties, either formal learning difficulties, recognised or unrecognised mental health difficulties, or states of denial or distress, which make discussion virtually impossible.

I think therefore that seeing the judge is not a policy imperative, it's an offer to children able to make use of it which should be a standard offer in this day and age. But the policy imperative is to make sure the right long term decision is taken by the state as far as possible for each individual child in a complex situation and especially to make sure we don't repeat mistakes as the state, particularly to replace insecurity by insecurity.

Narrator

They were followed by the cautious side's perspective, expressed by Anthony Hayden QC and Alison Paddle.

Anthony Hayden QC

From where does this present clamour for the greater participation of children arise? Well, my suspicion is it arises from yet another misinterpretation of the Human Rights Act 1998. But may I remind you that the full title of the convention is The Convention for the Protection of Human Rights and Fundamental Freedoms. Too often that word protection is forgotten.

The courtroom is, and should be, an adult environment in which professionals step up and take responsibility where parents have failed or are unable to do so. However sympathetic and less formal a family courtroom may be, it is nonetheless a courtroom and as such it is a wholly inappropriate environment to accurately seek to elicit this crucial evidence. Moreover, the very presence of the child in the courtroom might very well inhibit frankness. The very frankness and candour that the court truly needs if it is to make informed decisions.

The presence of the children may cause advocates to hold back from the rigorous and challenging cross examination that is often so important. Lawyers are trained to construct and to deconstruct arguments, to prove or to disprove facts, to analyse and evaluate expert evidence. But understanding feelings and emotions and the wishes of children is not our professional strength.

Nobody, I think, can sensibly suggest that a child should be required to listen to that evidence. But it would be unfair, disturbing and disempowering to a child to remove him from the court every time it's anticipated that that kind of sensitive evidence was likely to be heard. To parade the child into court, simply to take a snapshot of the evidence, is mere window dressing.

Alison Paddle

What does participation really mean? Whatever we offer needs to be equitable. We need to make sure that all children are considered and involved in an appropriate way for their situation and if we're not careful I think we run the risk of undermining the important role of children's guardians, family court reporters, all the people in Cafcass and social workers and other advocates who work with children. And it's very important that their work is not seen as somehow second best.

We also need to remember that more cases will be avoiding a final court hearing, or we're trying to keep more cases out of the court. So the idea of a child coming in at that point in a case - we need to be careful to think of children's participation being throughout the timescale of the case.

Children in these circumstances are often traumatised and have been damaged by what has gone on. Further exposure to the conflict within the court process runs the risk of re-abusing them, and an expectation placed on a child to say or not to say something that one or other parent would like them to say to a powerful adult like a judge needs really very careful handling if the features of abuse are not to be unintentionally replicated by the court process.

So, just to sum up, my cautious position is not one that opposes the enhancement of children's participation, rather what I seek is that it is genuine and done absolutely on an individual basis tailored to the needs of each child. But it has to be properly resourced and thought out carefully so that the process is sound, is not rushed and does not cause further damage to the child.

Narrator

This was followed by an open question and answer session.

Sir Mark Potter

It's over to you to discuss the question with them, and our own panel, that is Danya Glaser, the very well known child psychiatrist, District Judge Paul Carr, Dr Barbra Mitchells, Mr Justice McFarlane, another High Court Judge and Lucy Theis who is Chairman of the Family Law Bar Association. So now who'd like to make a contribution?

Khatun Sapnara

I'm Khatun Sapnara, I'm a barrister. There's been a lot of emphasis on preparing children for the court process and to meet the judge. Does the panel think that there ought to be similar consideration given, perhaps on a compulsory level, to preparing judges for meeting children?

Sir Mark Potter

I certainly anticipate that if real progress is going to be made in this respect that it involves introducing judicial education through the Judicial Studies Board and quite plainly the answer is yes, some judges have a natural facility for dealing with children, others, less so. And I think that on any view, training is necessary as we've discovered in other fields, even when we think we know all about it we simply don't when we hear from the real experts.

Amanda Checkley

Amanda Checkley, Independent Reviewing Officer. I have two points that I really want to raise today. The first is what consideration has been given to the views and/or of the Independent Reviewing Officer in this debate overall. The second is to draw everybody's attention to the fact that, as an Independent Reviewing Officer I am working with a number of children whose cases are in care proceedings and a number of them have expressed a wish to be more directly involved in the court process and concern that the views that are being given to the court may not be a complete representation of their own views.

Anthony Douglas

I think it's a well made point and one of our roles in Cafcass is to make sure that we discuss cases with IROs and certainly at the end of a case have a handover discussion with an IRO so that the plan is carried forward and there's some degree of joint working. That's patchy at the moment and we're involved quite intensely with groups of IROs around the country.

Peter Jackson QC

Peter Jackson, I'm a barrister. This is about communication between children and decision makers and people feeling confident in each other. There's a question I'd like to address to Dr Glaser. Is it not possible to think of intermediate steps that could markedly improve the situation of children, short of having to actually put them in a room with a judge, just as an open offer which they might go to in one bound? Would it help children if there was something a bit more user friendly, in that sense, amongst the processes that took place?

Danya Glaser

I think as various people have said there is a number of different reasons why a child might want to be involved in the process, of which meeting the judge is but one. And there are a number of different ways of the child being involved in the process, so, again, in short, I totally agree with you. And I think that the art of the game is to unpack what it is, to try to understand what it is which makes the child want to be involved in some way and if the child wants to be, and some don't, and then finding ways of achieving that and there are a number of different ways of achieving it.

From the children's point of view an involvement, and it may be a photograph, and it may be having their word read by the judge or heard by the judge or seeing the judge, or whatever it might be, may make a very large difference to the ability and possibility for the children to then live for many years afterwards with the decisions that have been made. And so I think we're talking about two different perspectives and needs.

Claire Druett

I'm Claire Druett, I'm a solicitor dealing with private law matters and I'm also a family mediator. Just following on from that, one of the issues that came up earlier on was about confidentiality so do you think it would be useful to have something within the court process, a confidential space, before children then launch out into everything they are saying and doing being available to everybody else involved?

Mr Justice Hedley

I was just going to say that Andrew McFarlane made the point earlier, which I think is absolutely fundamental to this, that we're crystal clear about what these meetings are intended to be and what they're intended to do. What we're talking about now is effectively children contributing to the evidence upon which the judge decides, which is perfectly proper because that's what the statute says should happen. But it raises quite different problems to any of the other problems that anybody else faces and I think there are Article 6 issues about confidentiality which would need to be addressed. I think this is a very uncertain area at the present time but the fundamental need whenever we see children is that there should be clarity about what we're doing, why we're doing it and what its scope truly is.

Narrator

Finally, Nick Crichton summed up how the debate went.

Nick Crichton

I think it was very successful. I think we've got to go away and discuss the matters that have been aired here this evening and think of a strategy for the way forward. I don't think that the way forward is to set down a set of rules from the 1 January next year, or any other year, by which judges must now start considering dealing with children. It's not going to be as easy as that. I think we're in the business of trying to change the culture of the way in which we deal with children in our courts over the course perhaps of the next ten years.