



www.familylawsociety.org

Is the Voice of the Child Heard in the Family Courts?

The Children act 1989 made the welfare of the child paramount. But are the ascertainable wishes of children truly heard in the Family Law Courts.

How do we know what the voice of the child really is? Is it what CAFCASS Officers say that it is? Is it what the parents with residence say it is? The late Richard Gardner from the USA developed the theory of Parental Alienation Syndrome, which showed that children could be brainwashed into denigrating and rejecting the non-residence parent. If a child rejects the parent could this be a symptom of parental alienation?

Should we listen to the voice of the child? What does this mean? Does it mean listening and ignoring, if so, what is the point of listening? It is merely paying lip service to the concept that the child should be heard and will only alienate the child. If listening means doing what the child says, then why should this be? Should we always accede to the wishes of the child? If the child says that they do not want to go to school, should we allow that to happen? If the child says they wish to go to bed at midnight every night, watch x-rated films and have wild parties should we meekly accept? After all this is listening to the point of the child. If we listen and ignore, why listen at all? The Gillick case in *Gillick v West Norfolk Health Authority* (1986) AC112 set a precedent that if a child was competent then their wishes should be heard.

Mabon versus Mabon and others (2005) 2FLR1011 three teenage boys aged 13, 15 and 17 were the subject of a residence dispute between their parents. The boys wished to be separately represented, even though a guardian was appointed for them. The Judge refused to allow them to be represented and they appealed. Thorpe LJ emphasised that in the case of mature, articulate teenagers the court must accept they had the right to be involved in cases concerning them as part of their right to freedom of expression and respect for their family life. The model of a guardian represented the children's interests, but not necessarily their wishes, was a paternalistic model where the children required separate representation.

In cases where children have rejected the non-resident parent had they expressed any wish to reject that parent when their parents were together? If there were no evidence to this effect then why would a child reject a parent after a split? It can only be coaching by CAFCASS or the resident parent and contact should be allowed. There should be therapeutic intervention for the child to allow them to talk through their feelings and to see if they are being influenced or misrepresented.

There must be a presumption that every child wants to see their parents unless there is a very good reason why they should not, by evidence of child abuse. Many trivial reasons are used to deny contact between parents and their children even having a parent imprisoned has been shown by research in the USA not to be sufficient reason for denying contact. It was found to be better for children to visit their imprisoned parents than not. Judges should have firm guidelines for denying contact.

The status quo for most children before a split is to have the love and care of both parents. Much is made of the status quo in the family courts yet the status quo before a split is often ignored by the court.

Children are often used as pawns in cases which is mentally damaging to their emotional development. To be denied contact with a non-resident parent is in many cases disturbing for children.

Many children will vote with their feet when they are older by returning to their non-resident parent. If their concerns were heard in the family courts then they would be less scarred.

CAFCASS has appointed a children's board and it has also introduced a complaints system called Viewpoint for children. Both of these developments are to be encouraged but CAFCASS does not allow children to make complaints about the contents of CAFCASS reports.

In recent years the National Youth Advocacy Service has been called upon to appoint guardians for children. This is a worrying trend because NYAS is an unregulated charity with no oversight by central government. NYAS has got it wrong in cases yet like CAFCASS they do not allow complaints against the contents of their reports.

CAFCASS in many cases sits next to the judge on the bench. This gives the wrong impression that they are expert, when they are not. For example, CAFCASS Officers are not trained psychologists.

All too often children are not seen with their non-resident parent. If their interactions were videotaped then firmer conclusions could be made.

Children over the age of six should have the right to see the judge in their cases. In cases when children have talked to the judge often the judge has reversed residence.

This article has argued that children's views can be misrepresented if formed by adults. Children generally want to see both parents and where a child expresses a wish not to see a parent then this should be subject to further investigation through therapeutic intervention. Children should be listened to and included in the plans for their future where it is safe and sensible to do so. Children should have the right to know both of their parents.

Brian Hitchcock.

53 James Green Road
Coventry
CV4 9SL
Tel: 02476 466064
Email: info@familylawsociety.org