

Sometimes children just need a good listening to...

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In many cases concerning arrangements for children, the children involved are mere bystanders and it is difficult to see how this is in the child's best interests. If a child is sufficiently mature, his or her views about issues that have an impact on their lives should be given centre stage in family proceedings. The Minister for Family Justice, Simon Hughes, seems to agree. He announced last week that it is *'the intention of the Ministry of Justice, and therefore the UK Government ... that from the age of 10 children and young people involved in public or private law family proceedings before the Courts will have access to the Judge in an appropriate way, ... to make clear their views as to what is the best resolution of the family dispute. Children and young people of ten and over will therefore be given the chance to make clear their views in person or if preferred in another way'*. Mr Hughes went on to say that he is also looking at working *'with the mediation sector to arrive at a position where children and young people of 10 years old and over have appropriate access to mediators too in cases which affect them.'* Whilst only an indication of the government's intention, I very much welcome Mr Hughes' announcement on two levels. Firstly, for the way in which it recognises and promotes the rights of the child and secondly for his acknowledgment that the voice of the child also needs to be heard loud and clear in cases which are resolved in mediation (which, in the face of an under resourced Family Court system, may well become 'the norm' when it comes to resolving private disputes relating to children). Of course, the extent to which a child should be able to participate in proceedings (whether in the Court arena or in mediation) is a controversial issue — how old should a child be to be deemed mature enough for their view to be heard? Mr Hughes opts for the age of ten (the age of criminal responsibility) but can it be that clear cut? Could it be dangerous to expose some children to the often troubled world of the adult decision making? To be blunt, can a ten year old really carry the weight of telling a Judge with which parent he or she should live or spend time? Surely, decisions about the involvement of a child need to be made on a case by case basis. Whilst one ten year old might be mature enough to speak directly to a Judge on the telephone, for another it might be a difficult experience and writing a letter might make more sense, or they may not wish to be involved at all. We need a mechanism for ensuring that the extent to which and the way in which children participate in proceedings — whether speaking directly to a Judge or giving their view via email or text — works for that particular child. There cannot be a 'one size suits all' approach and this inevitably means charging someone with establishing the way in which each child should communicate with the Judge. The obvious 'someone' to take on that role is the Children and Family Court Advisory and Support Service ('CAFCASS'). The voice of the child in family proceedings is currently channelled to the Court via CAFCASS, which is a public body independent of the Courts, social services and the education and health authorities. The Court usually asks CAFCASS to become involved in a case shortly after a party makes an application initiating proceedings. A CAFCASS officer is appointed to the case and works with children to find out their wishes and feelings, and reports those findings back to the Court. Sadly, the reality is that CAFCASS is under resourced (see for example, the recent case of [E-D v CAFCASS, 2014](#)) and in practice, is it fair to give CAFCASS the additional burden of dealing with the work that will be required to give children an appropriate (direct or indirect) conduit to communicate with the Judge or mediator? And what about those cases where parents are in mediation but Court proceedings have not been issued so CAFCASS are not involved at all. Who will ensure that mediators in those cases hear the voice of the child in an appropriate way? It seems that the real quandary for the Minister for Family Justice is how to put in place (and fund) a system that not only allows each child ten or over to play his or her role in proceedings, but also ensures that the way in which he or she plays that role is appropriate for that child. It will be interesting to see how the government's intention develops in practice.

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