

## The Court's paternal role

03 AUGUST 2017

Vanessa Mitchell (Duff)

REGISTERED FOREIGN LAWYER | HONG KONG

**CATEGORY:**

[BLOG](#)



I have often thought that being a parent and being a judge are not too dissimilar – there is the need to remain calm, to be the voice of reason, to listen very carefully to what you are being told (and be aware that it might not always be true) and to want the best for those who have come to you for advice, but to know that what they want is not necessarily the same as what is best.

When I am trying to be my best parenting self, I often aspire to be judge-like (and during the Summer holidays there is plenty of opportunity to hone my dispute resolution skills). The case of [Re A \(Letter to a Young Person\) \[2017\] EWFC 48](#), made me think that it is also sometimes important for judges to be a little like parents. In this case, a 14 year old boy made an application (that was then taken on by his father) to the court for permission to permanently relocate to Scandinavia with his father.

Both parents represented themselves during the hearing, and the boy (who was given the name Sam for the purposes of the hearing) gave evidence on the first day. The judge made the decision that his parents could not ask him questions directly, but that they could submit 5 questions each and the judge would ask them. Sam then went on a school trip, and the rest of the hearing (where both parents, and Sam's step father, and the CAFCASS officer gave evidence) went on without him. Once the judge came to his decision, he decided that rather than write the judgment in the usual way, he would write it as a letter to Sam. This inspired choice made it clear that Sam's welfare was of paramount concern to the judge. I hope that this decision inspires other judges in cases involving older children.

The letter was particularly poignant as it gave the judge an opportunity to explain to Sam the difference between taking into account Sam's wishes and feelings (which the judge is duty-bound to do) and adhering to those wishes and feelings. Whilst the judge was clear that Sam's views carried a lot of weight, he was concerned by the influence that his father had on those views: 'All fathers influence their sons, but your father goes a lot further than that. I'm quite clear that if he was happy with the present arrangements, you probably would be too. Because he isn't, you aren't.' He went on later: 'So I respect your views, but I don't take them at face value because I think they are significantly formed by your loyalty to your father.'

Ultimately the judge found that it would be in Sam's best interest to remain in England where he has his friends, most of his family and his school. The judge said that he hoped that Sam's father would stay in England too, and he made an order that if his father did stay here that Sam would see him more often. The judge managed to strike an impressive balance between showing respect for Sam's father, but also trying to help Sam to see that he had been manipulated. This type of judgment shows what an important role the court has, not just in resolving the immediate issue, but paving the way for a more harmonious future for the families involved.

In cases where a parent is seeking to influence a child's wishes and feelings it is so important for the court to take an active (and as in this case sometime creative) role to get to the heart of the problem. This issue is discussed further in [Lisa's blog on Parental Alienation](#).

# Authors

Vanessa Mitchell (Duff)

REGISTERED FOREIGN LAWYER | HONG KONG

Divorce and family

 +852 3711 1698

 [vanessa.mitchell@withersworldwide.com](mailto:vanessa.mitchell@withersworldwide.com)