

Natasha Phillips has asked me to comment upon a paper recently published by the Office of the Children's Commissioner relating to children's experiences in the Family Court. The paper was provided at the request of the Voice of the Child sub-group of the Family Justice Council which I chair.

Before I answer these specific questions I would make some preliminary points. It may be that some of the views that I express are my own personal views, but by and large I believe that they are held by the members of the group.

Everyone will be, or should be, aware of Article 12 of the UNCRC which requires that children's views about matters affecting them should be heard, respected and *taken seriously*. Children need to know that they have really been heard. That is not the same as getting what they want. Family courts need to ensure that they are able to hear children's views and to take them into consideration. In cases where they are unable to make the decision that the child wants, they need to be able to explain to the child why they cannot do as he or she wishes.

Too often I have heard young people in their late teens or early twenties who are distressed because they feel that their views were not listened to in court cases involving them when they were younger. Sometimes there may be justification for their distress. Sometimes it may just be a question of perception, but perception is important. It is a question of developing a child's trust in the process.

Children's views should be communicated to the court exactly as they express them and not as a professional might like to interpret them. For this reason I believe that children should be given the opportunity to meet with the judge if they want to do so, but at the same time it should be explained that it is perfectly all right to say that they do not wish to do so. It is a child's prime (indeed primal) need to remain within his/her family, or to keep in touch with their siblings. Courts have to make extremely difficult decisions which can create extreme upheaval in a child's life. The child is the expert in his/her own life, and should be given the opportunity to be heard. That does not mean that he/she should dictate, but they should be respected and heard.

I turn to Miss Phillips' specific questions –

- 1. The Office of the Children's Commissioner has recently published a controversial consultation which focuses on children's experiences in the family courts and which has also been submitted to the Family Justice Review for their consideration. The report itself though was requested by the Voice of the Child Sub-Group, of which you are the Chair. Why did you decide to request the report?**

The Voice of the Child Sub-Group was anxious to produce a response to the interim report of the Family Justice Review. We are, as our title indicates, very committed to hearing the voices of children. I am not sure why the OCC paper is referred to as 'controversial'.

- 2. The consultation itself involved 35 children, of whom the youngest questioned was three years old. Did you experience any resistance to the idea of involving not just children in research but very young children, too?**

We left it to the OCC to decide how to conduct the consultation. I am asked whether there was any resistance to involving children, and very young children. There was no resistance, and I would not expect there to have been. Children, however young, are individuals in their own right, and we have a duty to listen to what they have to say. Why would the OCC and the courts not listen to what a 3 year old has to say? I repeat that is not the same thing as making the decision they want us to make.

- 3. The quotes from the children in the report suggest that the participants were very vocal and keen to offer feedback. How were children found in order to invite them to take part in the consultation?**

It was left to the OCC to find the children who took part. It is my experience that children are almost always very vocal and keen to participate.

- 4. The report contains some ground-breaking proposals, like the need to ensure the fulfilment of the child's right to a voice under Article 12 of the UN Convention on the Rights of the Child. This would require professionals working with children inside the system to be trained to much higher standards. It is early days yet, but do you have any initial thoughts on how that standard might be achieved?**

I have already addressed the issue of Article 12. I do believe that professionals working with children should be well trained. The Voice of the Child sub-group is pressing for more specific training of Judges.

- 5. Another fascinating outcome of the consultation relates to children asking that their wishes and feelings be recorded verbatim, rather than being translated by adults relaying these messages. What are your thoughts on this request?**

I believe it essential that children's wishes and feelings should be recorded verbatim.

- 6. On a personal note, looking at the views children in the consultation wanted to share, which sentiments if any, surprised you the most?**

I have read all the sentiments expressed by children. I am not surprised by any of them. As might be expected some reveal a lack of understanding of the process. I am concerned that some children felt that they were marginalised or lied to. All the things the children have said I have heard before, and they demonstrate the importance of hearing what they have to say.

- 7. The report had only been out for one day when Researching Reform already noticed some concern in relation to its content: there are professionals inside the system who are worried that the consultation may lead to children being given too much responsibility in relation to the outcome of cases involving them and**

**ultimately overpowering the voices of their parents in the decision-making process. What would you say to these professionals?**

There is a difficult balance to strike. It is important that children should not be given too much responsibility within the process. Personally when I see children at my court the first thing I do is explain to them that a Judge has a number of things to weigh in the balance (the welfare checklist), and that while their wishes and feelings are extremely important to me, and while I will give them serious consideration, I may not be able to make the decision that the child wants to me make, and I explain to them that the decision is mine, not theirs.

- 8. There is a much deeper cultural question at the heart of the consultation which revolves around how we view children in Britain; do you think there is a need to couple a change in court culture with a change in government culture, so that decisions in the long-term remain child-friendly?**

Yes – I firmly believe that there needs to be a change in court culture. Cafcass Officers should routinely discuss with children, probably from the age of 5 or 6, whether or not they would wish to meet with the Judge, explaining that it is perfectly all right to say that they do not. We need to become more child friendly.

- 9. [You have said in the past](#) that there is no grand master plan for policy and legislation relating to children in the family courts, but there is of course a desire to improve things for them. What will be the next step for the consultation?**

It is difficult to discuss what might be the next step. We have to await the final report of the Family Justices Review.

- 10. The Voice of the Child Sub-Group has been responsible for producing some of the most [innovative guidelines for children](#) in the last two years. Does the Group have any plans for the future?**

It is the role of the Voice of the Child sub-group to provide a child-focused response to proposals, initiatives, and legislation. At the present time we are working with the Tribunal Service Immigration and Asylum Chamber to assist in a better working relationship between the Family Justice System and the TSIAC to ensure a greater understanding of the plight of children caught up in immigration difficulties. Our next task is to tackle the problem of hearing children's voices in the very difficult area of private law. The Government is anxious for more cases to be resolved by mediation. More and more parents are unrepresented. Cafcass reports are sought in a minority of the cases which do get to court. There is a serious issue to be addressed if we are to comply with Article 12.