

## **Interview with Judge Nicholas Crichton on the New Guidelines for Talking to Children in Family Proceedings**

The new guidelines are filled with promise but their current limitations concerned me; so I contacted Judge Crichton to find out more. In this interview Judge Crichton kindly gives up his time to explain in detail what he feels the Guidelines are all about.

1. You co-authored the new guidelines for judges meeting children who are subject to Family Proceedings; what led you to consider the creation of such guidelines?

Over the years I have seen a number of children and I believe that in the majority of cases it has been beneficial for the children.

2. Children often find it hard to talk to strangers and need to feel they are in a safe environment before being able to express themselves openly; will judges be given additional training to help them communicate with young adults and children of all ages?

The issue of training judges is a difficult one. The Judicial Studies Board already has difficulty in accommodating all the necessary topics in their training courses. However, I attended two courses last week where judges took these issues on board and experienced some success in role play with actors.

3. The guidelines state that whether a child can talk to a judge or not may be a matter of discretion for the lawyers or social workers involved: what happens if a child wishes to speak to a judge but the adults involved feel this is not appropriate?

It will always be a matter for a judge to decide. The judge should speak to lawyers, social workers and Cafcass officers before deciding. He/she should always be in favour of seeing a child who wishes to come to court, and should refuse only with good reason.

4. Section 3 is groundbreaking in itself in that it accepts the possibility that a child below the age of 7 may be able to express their wishes and feelings, notwithstanding any possible prejudice which arises out of parental conflict; what led to this sentiment being included in the guidelines?

There are some children of 6 or 7 who have a very clear idea of what is going on in their lives and who wish to be heard. Others of 12 or 13 are far less certain. We just did not wish to preclude the possibility that a child as young as 7 might wish to meet with the Judge.

5. Despite the various difficulties this kind of communication may involve, you and the other judges have said that there is a need to protect children in participation rather than protecting them from it; it's a hugely admirable sentiment - how do you see this kind of child focused process evolving in the next five years?

Slowly!

6. Huge care has been taken in the guidelines to re-iterate the view that children will not be made to feel responsible in any way for the outcome of such hearings should they speak with a judge; is the same care taken when a child elects to give oral evidence in court?

The occasions when the child might actually give oral evidence in court will be very rare. Of course considerable care should be taken at all times.

7. The guidelines explain that the judge's meeting with the child is not to obtain evidence but to inform the child of the proceedings and to assure the child that the judge understands their position; what happens if a child wants to share something which may be admissible as evidence?

This question is at the crux of why many judges will not see children. It is very important to explain to a child that the court cannot hold secrets. Anything the child says will have to be shared with the parties and their lawyers, although not necessarily in the same words. I believe that in the majority of cases children will already have told the Cafcass officer everything they want to say. However, it is always a possibility that they have held something back. It will be for the judge to decide how to share such information. I believe that children understand the notion of secrets, and will usually share the information even when they have been told that it will have to be shared with the parties. The issue may then be how to proceed from there. It has happened to me on one or two occasions, and on each such occasion it has been acknowledged, fed into the process, and we have been able to move on. However, we cannot ignore the possibility that the information that the child shares is something central to the case, and it may be denied by a parent. In those circumstances it may be necessary to adjourn for further investigation, or even a contested hearing. I do not see this as a massive problem – we should be engaged in a search for the truth.

8. How will these guidelines affect family courts across the country bearing in mind the present financial difficulties?

It is hard to say. I am not sure that the current economic circumstances necessarily affect the ability of a judge to find half an hour of his time to prepare to see a child, and perhaps half an hour of his time to see the child. I often see children at lunch time or at the end of the day.

9. Do you feel that judges are inclined towards talking with children or might there be a cultural barrier that needs to be addressed first before such guidelines are fully incorporated?

The guidelines are already fully incorporated. They have been sent out to all judges and they will shortly receive a dvd which shows young people with experience of court proceedings talking about the importance of being heard. As I say, this is an attempt to change the culture.

10. Finally, are these guidelines part of an ongoing process to help children feel empowered or do you feel enough has been done?

There is no long-term master plan. We just see it as important that children should be treated with respect. They are citizens after all, no less so because of their age. We would not deny an adult the opportunity to speak to the judge, so why would we deny the same opportunity to a child, unless there are good reasons for doing so.