

Enhancing Children's Participation in Court Proceedings

Children's ability to participate in court proceedings is an issue of rights. It is extremely important that children and young people are assisted to understand court processes and enabled to participate in them within the scope of their capabilities and mindful of the circumstances of their family situation.

Children and young people also have a right to be protected from participation in circumstances for example where their loyalties are strained, when they feel the pressure to please or punish others and when they think they are being expected to exercise decision-making powers. Also when they may be exposed to the glare of media scrutiny.

This is different from being given clear information about the limits of their responsibility and about the limits of confidentiality.

The 'cautious' position is not one that opposes enhancement of children's participation. Rather it seeks to ensure it is genuine, done in a child-focussed, properly resourced and thoughtful way, and that the process is sound, not rushed, and does not cause further damage to the child.

Issues

Which children? 50% or more of children that Cafcass deals with are 5 and younger. What about their participation? What about children with a disability? With limited language? All are citizens...

What does participation mean? Enhanced participation seems to have been equated with children seeing judges or participating directly in the court. (Why is it only judges that get mentioned in this context? – many cases are dealt with by magistrates.) These are just two of many possibilities and I suggest that enhancing participation should be seen as a much wider issue. Where there is pressure for fewer cases to come to court, or to have a final hearing the child's participation will be entirely outside the court.

Genuine participation is interactive. Children need sound information and an opportunity to develop their understanding over time – about what has happened in their family, about realistic possibilities for their future and about the responsibilities and duties of the court.

This interactive process needs to be facilitated by the skills of independent adults who have a sound knowledge of child development, who are able to listen to the children, but with skills in communicating with children who may hesitate, stumble, exaggerate, ingratiate and so on – Children who may have been harmed but who certainly have been exposed to damaging conflict.

Giving children the choice about whether and how far they participate is another skill which requires a patient, non-authoritarian approach.

Some children are pressurised explicitly or implicitly by parents to express views in line with the parents' wishes and children's expressed views can reflect this. Some children change their views completely in different places, speaking to different people, at different times. A child's developmental stage and their life experience can limit their ability to understand what is happening and the consequences of their expressed views. How many of us have heard a child say one thing and seen something quite different expressed in their posture, a grimace a shrug and so on.

Children in public law cases already have a Children's Guardian one part of whose role is to work with children and to ascertain their wishes and feelings. This role requires professional qualifications and expertise. There is a danger that a focus on judges seeing children will undermine the role of CGs. They have, at present a solicitor. At present roles taken on by people with a depth of skill and experience – but for how long?

In private law, only children in the most dangerous cases have a court-appointed guardian, and many have no independent person to listen to them and assist them in participating and ensuring their voice is heard.

There is work to be done in training all FCAs to enhance children's participation and we can learn from what children tell us they want. Working with a child through a case is a process, it is interactive and it takes time – it takes time for the child to get to know the Guardian. It takes time for the Guardian to make sense of the child's communications, about what they are saying in the context of their family circumstances, and to test and re-test whether their views are whimsical or enduring, and to discuss the possible outcomes with them. There are already risks that these skills are too infrequently being exercised, partly because of pressures to reduce the time spent by Guardians on face to face work, and partly because like other social work agencies CAFCASS is using minimally qualified, Family Support workers to be the ones who see children.

The cases that come to court are highly contested, serious, and often involve distressed, dysfunctional families where children are very likely to have suffered significant harm. Children in these circumstances are often traumatised and have been damaged by what has gone on. Further exposure to conflict risks re-abusing them and an expectation placed on a child to say or not say something in favour or against one or other parent, to a powerful adult like a Judge, needs careful handling if features of abuse are not to be unintentionally replicated.

Many children do not want to be involved by attending court or speaking to a judge and the CG is often in the best place to decide whether direct participation is advisable or whether an expectation that they should be involved directly risks creating further harm. Visiting a court, playing out a

scene, watching a DVD may be more informative and useful for some children.

Courts are adult-focussed institutions: legal processes and culture are not designed with children in mind. There are practical and policy issues that need to be addressed about how far courts can change to accommodate the needs of children.

Judges and magistrates are not trained in working with children nor do they necessarily have an interest in this skilled task. Often what children want is for the judge to explain the reason for the court's decision to them – not always a very easy or rewarding task. What if this is badly done? The helping professions recognise the risk of being sucked into unhelpful dynamics in complex cases – judges will not be immune from this.

Will all children understand confidentiality issues? It may be detrimental to their interests to express views that their parents then must hear. Remember all of us withdraw but a family is 'for life'. The Court may respect a child's rights but individuals in some families may have a very different view.

If the press and media are allowed into courts, children will be even more vulnerable to exposure, shame, being re-traumatised.

Each child is an individual, and we must ensure their participation meets what they need on a personal, individual level. What children want is the best outcome for themselves – participation is a means to that end.

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