



THE VOICE OF THE CHILD

THINKING ABOUT THE VOICE OF CHILDREN

- The historical perspective
- Arguments for and against the child's voice in mediation
- The child within family conflict
- Developmental context
- What does all this mean for children?

DIFFERENT PERSPECTIVES

‘Children should be seen and not heard’

John Mirk

Augustin Clergyman 1450

Working together to Safeguard Children 2023

‘Nothing is more important than children’s welfare.’

‘... Ensuring that children grow up in circumstances consistent with the provision of safe and effective care.’

THE SIGNIFICANCE OF THE VOICE OF THE CHILD

- Children Act 1989
- UN Convention of the Rights of the Child 1989
- Family Law Act 1996 (Legal Aid in connection with mediation)
- New appreciation of the and the distinctive and precise role of children in mediation
- Family Justice Review Final Report 2011 (Endorsed the importance of a greater child focus in the Family Justice System)

CHILDREN AND THE MEDIATION PROCESS

- The role of third persons in mediation (those not involved directly in negotiations but who are directly affected by the process)
- The ways in which mediation differs from other interventions and the need for clear boundaries with other interventions such as family therapy and welfare investigation and child counselling
- The tension between individual rights, the ethics of collaboration and consensual decision making (hall mark of mediation)

ARGUMENTS AGAINST INVOLVING CHILDREN

- The emotional impact on children
- The unfair burden on children to make decisions when parents are in dispute
- Are children able to make decisions about what is in their best interests for the long-term at times of family crisis
- Unreasonable parental influence

THE IMPACT ON PARENTS

- The decision making authority of parents being undermined
- A parent may withhold consent (undermine mediation process)
- Additional conflict
- Children's views imposed on parent/parents
- Siblings views differ contributing to parental conflict

THE IMPACT ON MEDIATORS

- Incompatible demands complicating their role
- The mediator cannot be seen as an advocate for the child
- The mediator forced into the role of arbitrator role if one parent is aligned with the views of the child
- Impartiality could be compromised (if one parent agrees with the child)
- Confidentiality issues when the mediator is conveying/not conveying information provided by a child

JUDICIAL VIEW

- The unfair burden placed on the child to express preferences knowing that the parents are in dispute
- The difficulties for a child when a decision is reached by the parents in mediation or in Court that is different to the expressed views/wishes of a child

ARGUMENTS FOR INVOLVING CHILDREN

- The physical presence of children can remind parents of parental responsibilities
- Research findings suggest that parents' views about what their children think/feel differ considerably (e.g. Netmums Report 2014) (stress of separation can diminish the capacity of parents to attune to a child)
- Children can be involved in arrangements made for them and not decisions
- Wishes and feelings vs focus on the need to be protected

INDIRECT INVOLVEMENT

- Parents often welcome the explicit focus on the needs of their children and in spite of conflict no evidence to suggest they disregard the welfare of their children
- Children do not have to be present at mediation to have their views considered (mediator has an ethical responsibility to ensure the needs of children are taken into account)
- When children know that their parents are talking together can be reassuring and so knowledge of the process may be more positive than being a part of the decision making process

LISTENING TO A CHILD'S VOICE

- Children express themselves in various ways
 - The powerful emotional presence of an infant
 - Egocentrism in preschool age children
 - The functioning/behaviour of a child (context)
 - Symbolic play
 - The voices around children (can we afford not to include other adults)

CAN WE INCLUDE THE CHILD'S VOICE IN THE PROCESS

- Are we able to include information about the child's voice/behaviour in the Mediation Information and Assessment Meeting?
- Are we able to assume that the child's voice should be included?
(consent)
- Should we need to provide 'reasons why' a child's voice should not be included
- Information from clinical experience
- What happens when a child's voice is not heard?

JULIAN

'I am literally two people. My parents separated when I was 7. I know they went to mediation and then they went to court. I think that was about money and which days I could be with them. They tried half of each week but they couldn't agree on who should collect me from school and take me back. In the end I had to go to boarding school. They never agreed on anything. I'm literally two people ... how I dress, when, and if I have to do homework. I like doing drama at school because then I can pretend to be one person. I wish I had been at the mediation. I could have told them I want to be myself.'

SUMMARY/MORE QUESTIONS!

- There are arguments against including the child's voice in mediation
- There are arguments for including the child's voice
- There are issues for mediators ... Can these be managed?
- Does the child's age matter?
- Should the child's voice always be included indirectly/directly?
- Can we think more broadly about a child's voice?
- Do mediators need more training to be confident when working with children?

THANK YOU