‘Children’s Participation’

Keynote address to West Midlands Law Society: 12.11.26

1. Across England and Wales today, we know that approximately 280,000 children and young people are caught up in family separation. Well over 80,000[1] of those children and young people are involved in proceedings before the Family Courts; some are living between two homes while their parents dispute arrangements for their future. Some are waiting to learn whether they can safely remain within their family or must be cared for elsewhere. They will all be experiencing a degree of uncertainty; some will also be experiencing conflict, neglect, abuse or loss at a point in their lives when security matters most.

2. But statistics can obscure as much as they reveal. When we see or hear the figure of 80,000, it is easy for family lawyers and judges[2] to think of caseloads, applications, hearings and files. What that number really represents is 80,000 childhoods unfolding in real time.

3. Of course, every one of those 80,000 children is unique. Every child enters the justice system with their own DNA, their own personalities, with different experiences, unique vulnerabilities, singular strengths and special hopes. Behind every case number is a child with relationships, attachments, dreams and fears. Behind every application stands a network of people whose lives are bound up with theirs: parents, siblings, grandparents, foster carers, teachers, social workers, youth workers, friends and communities. The work of those involved in dispute resolution for families in and out of the family justice system is ultimately not about processing cases; it is about helping families to make decisions, or actually making those decisions, which will shape the lives of children, sometimes for years, and occasionally for generations.

[1] More than 63,000 children are involved in private law proceedings and more than 19,000 in public law proceedings. Figures MoJ.
[2] The term ‘judge’ in this piece includes magistrates.

4. In court process, there is a statutory obligation to apply the welfare principle[3] individually; that obligation arises in no less meaningful a way in non-court dispute resolution too. None of us can slip into viewing a child's welfare through category or stereotype; child welfare must *always* be assessed in the context of that individual child, their circumstances and their family. And it is in this exercise that there exist important questions which I propose to address briefly with you today.

5. If we (and by 'we' I include parents, mediators, social workers, family law professionals, judges) are serious about decision-making in the best interests of children, how often do we truly engage with them? How often do we make meaningful efforts to understand their experiences, their concerns and their perspectives before decisions are made about their lives?

6. More than a decade ago, I became engaged in answering this question as a judicial member of the Ministry of Justice's Voice of the Child Advisory Group[4]. The group's work was grounded in a simple proposition: children's voices matter and should be heard in the context of family separation in and out of court. The Advisory Group recommended the adoption of child-inclusive practice out of court, and proposed that children aged ten and above should ordinarily be offered the opportunity to have their voices heard directly during dispute resolution processes if they wished. Ultimately, we went further still and argued that hearing the voice of the child should be regarded as the starting point of all dispute resolution processes affecting children.

7. Those recommendations were influential. They informed subsequent developments in mediation practice and professional guidance. Yet if we are

[3] Section 1(1) Children Act 1989
[4] voice-of-the-child-advisory-group-report.pdf; recommendation one, also para 18 (page 16)

honest, much of that vision remains unrealised. Recent reforms to family court processes have shone the light on our practice in decision-making in court.

8. So, it is timely to revisit the issue today by asking three straightforward questions:
    a. **When should we be thinking about children's participation around family separation?**
    b. **How should we achieve it?**
    c. **And why does it matter?**

When?

9. The short answer is that we should all be thinking about children's participation in decision-making throughout the entire journey of family separation. So I am not thinking simply about when a case reaches court, nor when Cafcass becomes involved, nor at the point when a judge is considering whether to meet a child (although each of these steps is important). Child participation should begin at the earliest possible stage and continue long after any litigation or dispute-resolution has ended.

10. The first decisions affecting a child are rarely if ever made in court. They are made around kitchen tables, in family homes, during difficult conversations between parents who are themselves struggling to cope with separation. Historically, many adults subscribed to the idea that children should be insulated entirely from such discussions. The familiar phrase was: *"not in front of the children."* But we now understand that children are often acutely aware that something significant is happening. They observe tension and detect change. They fill gaps in information with assumptions. The question is not whether children notice what is happening, but whether the adults can help them to understand what is happening in a manner which is safe and appropriate.

11. Parents bear the primary responsibility for enabling children's participation; that is in part what 'parental responsibility' as defined in the Children Act 1989[5] means. However, we know that separation frequently places parents under enormous emotional pressure. Their capacity to communicate effectively with their children may be compromised precisely when it is needed most. That is why wider family networks, schools, Early Help services, family therapists, Family Group Decision Making processes and other professionals have such a vital role to play.

12. Many parents rightly seek help with decision-making by accessing one or more of the many forms of non-court dispute resolution services; for many years now there has been a broad and strong consensus of the value of resolving disputes out of court. The Family Justice Review[6], reporting in 2011, recognised the particular value of *child-inclusive* mediation, and the panel observed that this model should be readily available to families where it is safe and appropriate, and undertaken by well-trained practitioners. Yet the reality remains strikingly different from the aspiration. Research continues to demonstrate that many children, including older children and teenagers, do not feel that they have been consulted directly regarding decisions affecting them[7].

13. A 2025 survey conducted by the Family Mediation Council found that child-inclusive mediation was taking place in only around sixteen per cent of relevant cases involving children over ten years old. The variation between practitioners was enormous. Some mediators reported almost no child involvement; others had made child participation the norm[8]. That variation tells us something important. The principal barrier is not usually capability; it is culture. Some professionals instinctively regard children's participation as a routine aspect of

[5] Section 2 Children Act 1989
[6] Final Report [2011] at [4.106]
[7] Hargreaves, C. et al. (2022) *Uncovering private family law: What can the data tell us about children's participation?* Nuffield Family Justice Observatory.
[8] Although the reaccreditation requirement that child-inclusive mediation (CIM)-accredited mediators must conduct at least three CIM cases in a three-year period (or alternatively attend refresher training in CIM) will mean that these mediators will not gain reaccreditation if they fail to comply with the requirements (FMC Standards, August 2025, 6.3(b)).

practice; others continue to view it as exceptional. That culture must continue to develop.

14. Within the Family Court, important reforms are underway. The Child Focused Court model, soon to be operating in approximately half of the Family Courts nationally, places children's experiences and participation much closer to the centre of proceedings. The preparation of the Child Impact Report early in the process has significant potential to improve understanding of children's perspectives and experiences, and at the right time; invariably these reports bear a photograph of the child in the opening section, and often a direct message for the Judge inside the report itself. As this model develops and expands, it is important that we recognise what it is trying to achieve. Child-focused justice is fundamentally concerned with improving outcomes for children; coincidentally, it is proving to be an efficiency initiative with significantly reduced time between application and final decision. The investigative approach is designed to explore lived experiences of all members of the family; the former Family Division President, Sir James Munby, captured a profound truth when he observed[9] that a proper appraisal of a child's best interests is unlikely to emerge mysteriously from the adversarial process alone.

15. And child participation should not end when court proceedings conclude. One of the most neglected aspects of participation concerns communication after decisions have been made. Children regularly report that they do not understand what was decided, why it was decided, or what happens next. Children who have never received any explanation of a court's decision cannot reasonably be said to have participated fully in the process. Meaningful participation includes meaningful feedback.

[9] Munby, Sir James (2015). 'Unheard Voices: the involvement of children and vulnerable people in the family justice system'. Family Law 45(8): 895-902

16. One particularly useful framework for testing all that I have said here is Professor Laura Lundy's model of participation; this describes four essential elements: space, voice, audience and influence. Children must have safe opportunities to express views, support to formulate and communicate those views in a way which works for them, an audience willing genuinely to listen and who can make change, and evidence that their views have informed decision-making. I suggest that the final element identified by Lundy, namely *influence*, is often neglected. Children do not expect always to get their own way, but what they do expect is for someone to explain what happened, why it happened and how their contribution was considered.

17. Participation without feedback is incomplete participation; recent lessons from the Covid Inquiry[10] (module 2) reinforce this point. One of the Inquiry's conclusions was that children's experiences and perspectives were not adequately considered during crucial decision-making processes. Communication with children was often inadequate, and children's needs were frequently overlooked. There is a wider lesson here. When adults do not hear children, adults make poorer decisions.

How?

18. If participation should happen throughout the journey, the next question is how it should occur. There is no single answer to this important question.

19. As I have earlier observed, children are not a homogeneous group. The means by which a seventeen-year-old wishes to participate in decision-making is likely to be entirely different from that preferred by a seven-year-old. Children with communication difficulties may require a different approach altogether.

[10] UK Covid-19 Inquiry – Modules 2, 2A, 2B, 2C: Core decision-making and political governance – Volume I: Introduction and key events from January 2020 to May 2022: Recommendation for "Improving the routine consideration of the impact that decisions might have on those most at risk in an emergency: This includes extending to England and Northern Ireland the implementation of the socio-economic duty within the Equality Act 2010 and the use of child rights impact assessments" (emphasis added).

Participation must therefore be tailored, proportionate and responsive to individual need. The first thing we must avoid is tokenism.

20. It is entirely possible to create procedures which appear participatory while conveying little real influence or respect; thus, asking a child a question and then ignoring the answer is not participation. Consulting a child without ensuring they understand the process is not participation; creating opportunities that children find intimidating, inaccessible or irrelevant is not participation.

21. And the language we use to engage children matters enormously. The Family Justice Young People's Board reminded us many years ago, through its influential *Mind Your Language* work, that we should not "use acronyms or legal terms as I don't understand what they mean". They want adults to remember that legal terminology which is routine for us may be bewildering to them. It is as well also to remember that children do not experience themselves as case numbers, applications or proceedings: "I would like to be referred to by my name. These proceedings are about my life". Opportunities for participation should be offered at different stages of the process; family justice *is* after all a process, and participation need not be a single event.

22. Enabling participation is partly instinctive, and partly a skill; listening to children well is a professional competence which requires training, practice and reflection. Cafcass is good at this, and their practitioners employ a wide range of tools to facilitate communication with children. They have accumulated considerable expertise in helping children express themselves safely and effectively; after all, they receive more than 220 new cases in through their doors every working day[11]. As professionals, we can learn from their expertise.

23. And that learning includes the judges. I believe that there has been something of a shift in judicial attitude to child participation in recent years; judges today are

[11] https://www.cafcass.gov.uk/about-us/our-data

generally more willing to consider direct engagement with children than was the case a generation ago. This change has been welcomed by many children and young people. It reflects a growing recognition that judicial decision-making may be improved through direct understanding of children's experiences. But it must be done properly. The Family Justice Council's 2010 guidance on judges meeting children has always recognised the benefits and risks involved. Meetings between judges and children are not evidence-gathering exercises; they are not informal cross-examination sessions, nor are they to be treated as opportunities to transfer responsibility for decision-making onto children. The decision in *Re KP*[12] remains a salutary reminder of the dangers of getting this wrong; the Court of Appeal in that case concluded that the judge had moved beyond a listening role into the impermissible territory of gathering evidence. The child concerned described the experience as "intimidating". The Court emphasised the importance of the judge remaining largely a passive recipient of the communication that the child wishes to provide.

24. The lesson from that case is not that judges should avoid engagement; the lesson is that meaningful engagement requires care, humility and clarity of purpose.

25. Writing to children can also play a valuable role. Over recent years there has been growing interest in judicial letters to children. Examples such as Peter Jackson LJ's well-known judgment in *Re A (Letter to a Young Person)*[13] and more recent examples from family judges around the country[14] demonstrate how carefully crafted communication can help children understand decisions that affect them.

26. Yet we should also recognise that the world in which children communicate is changing rapidly. Today's young people inhabit digitally integrated lives. Many communicate visually, interactively and instantaneously, whereas our systems

[12] [2014] EWCA Civ 554
[13] [2017] EWFC 48
[14] Re Alfie (A Child) (Welfare) [2026] EWFC 178 (B) (HHJ Case); *The London Borough of Waltham Forest v A Mother & Ors* [2026] EWFC 304 (Recorder Piccos)

remain overwhelmingly paper-based, text-based and adult-centred. We should therefore ask ourselves whether the mechanisms we currently offer for participation genuinely reflect how contemporary children communicate and receive information.

27. The challenge becomes particularly apparent when considering Generation Z (which for our purposes are the fourteen- to eighteen-year-olds) and those who follow them. Research suggests this generation has a different attitude towards authority, institutions and public decision-making. They are less deferential than previous generations[15]. They expect engagement; they expect explanation; they often expect dialogue. Perhaps nowhere is this more striking than in the emergence of social media narratives concerning family justice. Many young people subject to deprivation of liberty orders, for example, have chosen to discuss their experiences online through platforms such as TikTok. These posts range from still images (accompanied by a caption) to videos lasting several minutes discussing the impact of the restrictions. Anecdotally, these posts often attract what appear to be supportive and encouraging responses from other young people who are themselves subject to deprivation of liberty orders. Whatever view one takes of that phenomenon, it represents an important form of participation and self-expression. It should prompt us to consider whether our own systems are providing adequate opportunities for children to communicate their experiences in ways which feel meaningful to them.

28. I should not ignore other barriers or potential barriers to child participation. In the court sphere, there is no escaping the fact that judicial time is limited and resources are constrained. Professional and judicial confidence about this activity varies. Training needs remain significant. But acknowledging those barriers cannot become an excuse for inaction. The question is not whether participation is difficult; the question is whether it is important enough to justify the effort required. I suggest that it is.

[15] Society Watch: Understanding the New Generation of Voters (2024)

Why?

29. Ultimately, this is the most important question. Why does children's participation matter?

30. The answer begins with the nature of family separation itself. Family separation is one of the most significant transitions that many children will experience during childhood. Separation does not inevitably produce poor outcomes. Many children adapt well, and many families reorganise themselves successfully. However, prolonged conflict, uncertainty and exclusion from important decisions can have enduring consequences for children's wellbeing and development.

31. The Family Solutions Group's report *What About Me?*[16] identified a range of benefits associated with hearing children's voices in this context. Children who feel listened to at the point of family separation report greater understanding of what is happening, greater resilience and a stronger sense of respect. Young people who are listened to report that it is 'cathartic'; it makes them feel respected; they feel that their parents care about their opinions; it gives them an outlet to discuss their concerns and to understand what is happening and gives them 'a sense that somebody is there for them'. Child-inclusive processes are associated with improved parental cooperation and more durable agreements. In short, participation is not simply a matter of procedural fairness, it improves outcomes.

32. In that regard, it is worth remembering that children who are able safely and appropriately to express their experiences, wishes and feelings provide adults with information which might otherwise be unavailable.

33. There is also a compelling body of evidence concerning childhood adversity and trauma. Many of you will be familiar with the work of Bessel van der Kolk in *The Body Keeps the Score*. Although his work is not specifically about family law, it

[16] FamilySolutionsGroupReport_WhatAboutMe_12November2020-2.pdf-final-2.pdf

contains important insights for all family justice professionals. Van der Kolk emphasises the profound effects of attachment disruption, emotional neglect, chronic stress and persistent conflict on children's development. The central issue is not necessarily the fact of parental separation; rather, it is the extent to which a child experiences loss of security, chronic conflict, uncertainty and powerlessness. Children cope best when conflict is minimised, when relationships remain secure, when routines are predictable and when caring adults remain emotionally available. Participation contributes directly to those objectives because it reduces uncertainty and helps children make sense of events affecting their lives.

34. But we must also be careful; participation does not mean asking children to make decisions which belong to adults. There is an important distinction between hearing children's voices and transferring responsibility onto them. As Baroness Hale memorably observed[17], every parent who has ever asked a child what they would like for tea knows that listening to a child is not the same thing as doing whatever the child wants.

35. The principle is straightforward: children should be heard but adults remain responsible for decisions. The child's perspective informs the decision; it does not necessarily determine it. Baroness Hale went on to explain this beautifully when she observed in the same judgment that it is the child, more than anyone else, who must live with the consequences of the court's decision[18]. Accordingly, there is every reason to listen to what the child has to say.

36. There is also an important rights-based dimension to all that I have said; participation is important both because it improves outcomes and because children are entitled to it as a matter of right. As I mentioned recently[19], Article 12 of the United Nations Convention on the Rights of the Child recognises every

[17] *Re D (a child) (abduction: rights of custody)* [2006] UKHL 51
[18] *Re D* at [57]
[19] Legal Wales (9 October 2026): 'Children's Rights'

child's right to express views in matters affecting them and to have those views given due weight according to age and maturity. Crucially, this is not a right reserved for older teenagers. It is a right possessed by all children. Participation is therefore not simply good practice; it is the practical expression of a fundamental right.

37. Three years ago, in 2023, the United Nations Committee on the Rights of the Child highlighted[20] continuing concerns that children's views are not yet systematically taken into account in decisions affecting them. The Committee called for children's participation to be strengthened not only within judicial processes but across family, community, educational and policy settings. It also emphasised the need for proper training for professionals who work with children. I wish to emphasise both of those observations as continuing to have real currency.

Conclusion

38. We stand at a moment of considerable change within family justice. The Families First Partnership programme, Family Group Decision Making, Child Focused Courts, increasing understanding of parental conflict, and a range of other reforms all point in the same direction. Collectively, they seek to improve outcomes for children by placing children's experiences more firmly at the centre of decision-making. But there is more for us to do.

39. While well outside my sphere of influence, we are entitled to hope that steps are or will be taken to raise awareness and education for young people and adults about family separation and its impact, the benefits of owning a decision, the rule of law, family justice, and the role of courts. There is plenty of work to do towards the development of professional cultures which regard child participation in decision-making in and out of the court, not as an optional extra but as an

[20] At para.23 of the Concluding observations on the combined sixth and seventh periodic reports of the United Kingdom of Great Britain and Northern Ireland (Adopted by the Committee at its ninety-third session (8–26 May 2023)).

essential component of good practice. In this regard, the forthcoming review of the 2015 Voice of the Child Advisory Group's work will, I hope, provide renewed impetus and practical recommendations for change. Coincidental with this will be the publication of the revised Guidance on Judges meeting Children; I trust that this will equally stimulate discussion among judges at all levels of the Family Court about this important activity. I propose, as Head of Family Justice, to treat 2027 as the year of Children's Participation; in that regard I have received strong encouragement from Jackie Tiotto from Cafcass, Dame Rachel de Souza the Children's Commissioner for England[21], and Lisa Harker and Jude Eyre of the Nuffield Family Justice Observatory. Crucially I am soon scheduled to spend time with young people in order to obtain their perspectives on how best to tackle this crucial issue.

40. In the course of the next twelve months, I would like to us to think more broadly about accountability. At present, we collect remarkably little national data about children's participation. We do not routinely measure how often judges meet children, nor do we systematically record judicial letters to children. We do not routinely publish information about children's engagement within child-focused court processes. Consequently, we struggle to evaluate progress and identify where improvement is needed. If participation matters, we should measure it. If we value it, we should monitor it. And if we aspire to improve it, we should make our performance transparent.

41. Let me end where I began. Every one of those 280,000 or so children who experience family separation is living through a story that will shape their future. We cannot remove all the pain of family separation, nor can we eliminate every conflict. We in the courts cannot always deliver the outcome for that cohort of 80,000 children and young people (for whose lives we have a responsibility) which that child hopes for, nor should we. But we can listen, explain, and involve. And we can ensure that children and young people are not passive recipients of

[21] I look forward to working too with Rocío Cifuentes, her counterpart in Wales.

decisions made about their lives, but respected participants in processes which profoundly affect them. If we achieve that, we will not merely improve participation, I believe that we will improve justice itself.

END