

“Truly wonderful the  
mind of a child is” Yoda

# Presentation

1. The child's voice in society and in the context of family law and mediation.
2. Some of the sources of children's rights to have their interests considered and/or their voices heard during their parents' separation.
3. Mediation – scope to involve more children directly and indirectly?

# Children should be seen and not heard...are we meeting children's expectations?

Baroness Hale judgments:

D [2006] UKHL 51:

"as the parent who has ever asked a child what he wants for tea knows, there is a large difference between taking account of a child's views and doing what he wants... but there is now a *growing understanding of the importance of listening* to the children involved in children's cases. *It is the child, more than anyone else, who will have to live with what the court decides. Those who do listen to children understand that they often have a point of view which is quite distinct from that of the person looking after them. They are quite capable of being moral actors in their own right.* Just as the adults may have to do what the court decides whether they like it or not, so may the child. But that is no more a reason for failing to hear what the child has to say than it is for refusing to hear the parents' views."

Re LC (Children) [2014] UKSC 87:

"Enquiring into the child's perceptions of where he was habitually resident accords with *our increasing recognition as people with a part to play in their own lives, rather than passive recipients of their parents' decisions.*"

# What Impacts children:

Sharing your feelings with a person you trust will help you make sense of them. Scientists have discovered that sharing your feelings triggers a feel-good chemical in your brain that makes you feel relaxed and calm. Your voice can make a big difference to other people too, including friends



**Wellbeing**

## My voice matters

Sharing your thoughts can ease your worries and help you feel calm.

**place2Be's CHILDREN'S MENTAL HEALTH WEEK** 8-11 FEB

**Children's rights**

Your right to express your views, thoughts and feelings, and to have them taken seriously, is part of the United Nations Convention on the rights of the child. This is an agreement by the United Nations (an organisation of 193 countries that work together on climate change and peace) that adults and governments must work together to protect and improve children's rights.

**Top tips to find your voice and be heard**

- If you're confused about something, don't be afraid to ask questions.
- Do you find it difficult to express yourself with words? Try this fun art activity and "make a swirl" to share what matters to you [tinyurl.com/TWJ-swirl](https://www.tinyurl.com/TWJ-swirl)
- Write a letter to your MP or local newspaper to support something you believe in, like recycling or new facilities at your local park.
- Tell a trusted friend or adult about how you feel and what they can do to help.

**Why is it important?**

Sharing your feelings with a person you trust will help you make sense of them. Scientists have discovered that sharing your feelings triggers a feel-good chemical in your brain that makes you feel relaxed and calm. Your voice can make a big difference to other people too, including friends and siblings. Jaime Thurston is from a charity called 52 Lives, which delivers kindness workshops in schools. She says, "You can spread kindness and happiness simply by speaking. With a few kind words, you could help someone feel good about themselves or let them know they are supported."

**How can you find your voice?**

Clements suggests practising conversations with friends, parents or carers on the way home from school and seeing if you have different opinions about something. If you're struggling to explain your feelings, find a way that feels right for you, whether it's talking face-to-face or writing it down. When you're ready, "take a deep breath and believe in yourself," says Thurston. "Know that your opinion matters."

**What does speaking up mean?**

Do you have trouble sharing your thoughts – or worry no one will listen if you do? Making your voice heard means understanding that your words matter and your opinions count. Dr Julia Clements is a psychologist (an expert in thoughts and feelings) at Place2Be. She tells *The Week Junior* it means "expressing your views, thoughts and feelings, not bottling them all up, and being open to hearing the thoughts, feelings and views of others too." Making yourself heard isn't about shouting the loudest; in fact you don't have to use your voice at all. You can express what you like and don't like or what you want for the future by writing or drawing what matters to you," she explains.

**Practice with friends**

3 February 2024 • The Week Junior

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**MY VOICE MATTERS!**

# Article 12, UN Convention on the Rights of the Child

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely *in all matters affecting the child*, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any *judicial and administrative proceedings* affecting the child, either directly, or through a *representative or an appropriate body*, in a manner consistent with the procedural rules of national law.

# Most common references to children's interests and voices...

## Children Act 1989

### 1 Welfare of the child

(1) When a court determines any question with respect to—

(a) the upbringing of a child; or

(b) the administration of a child's property or the application of any income arising from it, the child's welfare shall be the court's paramount consideration

(1)(3) In the circumstances mentioned in subsection (4), a court shall have regard in particular to—

(a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);

### 3 Meaning of "parental responsibility"

(1) In this Act "parental responsibility" means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property.

# Family Procedure Rules 2010, PD12B (CAP)

## The child in the dispute

- 4.1 In making any arrangements with respect to a child, the child's welfare must be the highest priority.
- 4.2 Children and young people should be at the centre of all decision-making. This accords with the Family Justice Young People's Board Charter ([https://www.cafcass.gov.uk/media/179714/fjyjb\\_national\\_charter\\_1013.pdf](https://www.cafcass.gov.uk/media/179714/fjyjb_national_charter_1013.pdf)).
- 4.3 The child or young person should feel that their needs, wishes and feelings have been considered in the arrangements which are made for them.
- 4.4 Children should be involved, to the extent which is appropriate given their age and level of understanding, in making the arrangements which affect them. This is just as relevant where:
- (1) the parties are making arrangements between themselves (which may be recorded in a Parenting Plan),  
as when:
  - (2) arrangements are made in the context of dispute resolution outside away from the court,  
and/or
  - (3) the court is required to make a decision about the arrangements for the child.

- [PRACTICE DIRECTION 12B – CHILD ARRANGEMENTS PROGRAMME \(justice.gov.uk\)](https://www.justice.gov.uk/practice-directions/12b)

# Mediation Paradox

- FMC Code

*5.3 Welfare of children*

At all times the Mediator must have particular regard to the welfare of any children of the family, and should encourage the Participants to focus on the needs and interests of the children as well as on their own.

*6.6 Welfare of children*

6.6.1 The Mediator must encourage the Participants to consider the children's wishes and feelings. All children and young people aged 10 and above should be offered the opportunity to have their voices heard directly during the Mediation, if they wish.

6.6.2 Where the Mediator and the Participants agree that it is appropriate to consult any children directly, the consent of those children must first be obtained.



# Engagement With Children: Examples

- Judges writing letters to children or addressing the judgment to children:
  - [E \(A Child\) Step-parent Adoption](#) [2022] EWFC B3 (24 January 2022) ([bailii.org](#))
  - [E \(A Child\) Step-parent Adoption](#) [2022] EWFC B3 (24 January 2022) ([bailii.org](#))
- [Q & V Q & V \(1980 Hague Convention and Inherent Jurisdiction Summary Return\)](#) [2019] EWHC 490 (Fam) (06 February 2019) ([bailii.org](#))
- [Re A \(Children\) \(Parental Alienation\) \(September 2019\)](#) [B56.pdf](#) ([bailii.org](#))

# References:

- Lisa Parkinson, Family Mediation, chapters about child-focused mediation and child-inclusive mediation.
- Children's voices: centre-stage or sidelined in out-of-court dispute resolution in England and Wales? [2015] CFLQ 43
- "Are You Listening?" Conversations with children during parental separation and divorce [2021] Fam Law 1560
- Mediating in disputes concerning children [2019] Fam Law 1069
- [Separating families: Experiences of separation and support - Nuffield Family Justice Observatory \(nuffieldfjo.org.uk\)](https://www.nuffieldfjo.org.uk)