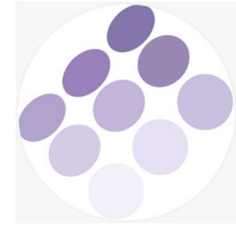


SAHCA Know How Materials

Family Section



The procedure for children meeting the Judge in family cases

Brent v D and Others [2017] EWHC 2452 (Fam).

<http://www.bailii.org/ew/cases/EWHC/Fam/2017/2452.html>

In this interesting case, Mr Justice MacDonald considers the necessity for conformity with the "Guidelines for Judges Meeting Children who are Subject to Family Proceedings" [2010] 2 FLR 1872, as well as compliance with case management directions.

The case concerned three children: M aged 16, B aged 15 and J, aged 14, who are citizens from Somalia with permanent leave to remain in the United Kingdom. They had made British Citizenship applications, which were pending. Their parents are naturalised citizens of the United States, where they live with the children's seven younger siblings.

The Local Authority sought final care orders in relation to the children, which were either agreed or not opposed by the other parties. The agreed care plans for the children were that M would remain in a residential unit until her return to the care of a paternal aunt S, who lives in the United Kingdom, B who was living with her paternal aunt H in the United Kingdom would remain there, and J, following the regulation of his immigration status, would be rehabilitated to his parents' care.

A month before the final hearing the child's solicitor learned that B had informed the Children's Guardian that she would like to meet the Judge at the final hearing. However, despite the Guardian chasing this request, the solicitor for B did not inform the court of B's wish to meet the Judge until just before the final hearing. This resulted in B attending court expecting to meet the Judge, when the solicitor for the child had not made the necessary arrangements with the Judge or complied with the Guidelines.

The relevant part of the 2010 Guidelines, which remain in force and have not been amended, were recorded in the Judgment and state as follows:

"Guidelines

1. The Judge is entitled to expect the lawyer for the child and/or the Cafcass officer:
 - (i) to advise whether the child wishes to meet the Judge;
 - (ii) if so, to explain from the child's perspective, the purpose of the meeting;
 - (iii) to advise whether it accords with the welfare interests of the child for such a meeting take place; and

(iv) to identify the purpose of the proposed meeting as perceived by the child's professional representative/s.

2. The other parties shall be entitled to make representations as to any proposed meeting with the Judge before the Judge decides whether or not it shall take place.

3. In deciding whether or not a meeting shall take place and, if so, in what circumstances, the child's chronological age is relevant but not determinative. Some children of 7 or even younger have a clear understanding of their circumstances and very clear views which they may wish to express.

4. If the child wishes to meet the Judge but the Judge decides that a meeting would be inappropriate, the Judge should consider providing a brief explanation in writing for the child.

5. If a Judge decides to meet a child, it is a matter for the discretion of the Judge, having considered representations from the parties –

(i) the purpose and proposed content of the meeting;

(ii) at what stage during the proceedings, or after they have concluded, the meeting should take place;

(iii) where the meeting will take place;

(iv) who will bring the child to the meeting;

(v) who will prepare the child for the meeting (this should usually be the Cafcass officer);

(vi) who shall attend during the meeting – although a Judge should never see a child alone;

(vii) by whom a minute of the meeting shall be taken, how that minute is to be approved by the Judge, and how it is to be communicated to the other parties.

It cannot be stressed too often that the child's meeting with the Judge is not for the purpose of gathering evidence. That is the responsibility of the Cafcass officer. The purpose is to enable the child to gain some understanding of what is going on, and to be reassured that the judge has understood him/her.”

In his Judgment Mr Justice MacDonald referred to the comprehensive review of the relevant law in *Re KP (A Child)* [2014] 1 WLR 4326 per Moore-Bick LJ in relation to Judges meeting children with particular reference to paragraph 52 of that Judgment. Mr Justice MacDonald observed that none of the guidelines had been considered in advance of the hearing.

The key part of Mr Justice MacDonald's Judgment is paragraph 48 where he states:

“The 2010 Guidelines exist to ensure that when a judge meets a child, the purpose of that meeting and the expectation of all who are party to it are clear both to the child and to the parties to the proceedings. The need for the purpose of the meeting and the expectations of those who are party to that meeting to be clear is emphasised by the clear injunction in the Guidelines against using the meeting to obtain evidence and in favour of using the meeting to ensure that the child feels more involved and connected with the proceedings.”

Mr Justice MacDonald suggested “as a starting point, the question of the Judge seeing the child should ordinarily be raised and determined at the issues resolution hearing.” Therefore, it is good practice for the solicitor for the child and to ascertain the children’s wishes and feelings in relation to meeting the Judge prior to the issues resolution hearing. However, should the child’s wish to see the Judge only become evident after the issues resolution hearing, it should be raised with the Court expeditiously.

Finally, the Judge highlighted the failure by the Local Authority to comply with case management orders. At paragraph 61 he says: “A failure to comply with orders of the court plainly risks prejudice to the welfare of children in respect of whom the court is concerned. I make no apologies for repeating what I said in the *London Borough of Redbridge v AB&E (Failure to Comply with Directions)*. Whilst my comments in that case were directed towards the Local Authority, the principles apply to all parties to public law proceedings.”

Deborah Piccos