

Judicial communications to minors in private law children proceedings (Re A (Letter to a Young Person))

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Family analysis: A judge's decision has been written as a signed letter by the judge to the teenage boy whose residence was at issue. Chris Stevenson, barrister at Fourteen, looks at the extraordinary format of the judgment in Re A and predicts that we may well see more decisions communicated in this way in the future and that this affirms the underlying notion that it is the child's best interests which are of most importance in these types of cases.

Original news

Re A (Letter to a Young Person) [2017] EWFC 48, [2017] All ER (D) 200 (Jul)

A 14-year-old boy, S, made an application to be allowed to go and live with his father in an identified Scandinavian country. S was living with his mother and step-father at the time. The father subsequently took over the application. The court found that the father had provided the court with no information as to living, schooling and working arrangements in respect of his application to live with S, the court held that that had not been good enough. The Family Court, rejected the father's application for S to reside with him. The court held, among other things, that the father had lost sight of what was in the best interests of S and there was no confidence at all that a move to Scandinavia would work. Directions were given as to precisely how S would give evidence at the hearing. Judgment was given in the form of a letter, addressed directly to S. Provision was made for contact between S and his father and an order was made under section 91 (14) of the [Children Act 1989 \(ChA 1989\)](#), preventing further applications about S by anyone, including S himself, until 1 September 2019.

What is the significance of this case?

This case is significant for a number of reasons but, in particular, two.

First, the fact that this was, initially, an application made by the child himself to be permitted to live permanently with his father—with whom he had hitherto spent time, while living with his mother and stepfather—in Scandinavia. It is of great interest to see how the judge took steps to ensure that the child was able to participate fully in the proceedings, including by way of giving relatively brief evidence at the commencement of the final hearing.

Second, and most interestingly, was the form in which the court handed down its judgment. Here, Peter Jackson J gave his decision in the form of a letter, addressed directly to the child, and it is plain from reading the letter the lengths to which the judge went in order to ensure that his decision was accessible for the child. This is perhaps the clearest example of the Family Court seeking to ensure that family proceedings, often depicted in the media as inaccessible and—at times—secretive, are accessible to those who are directly affected, particularly (as is the case here) a competent child.

What should practitioners be mindful of when advising in this area?

While not clarifying any areas of the law, the case serves as a useful guide for practitioners in terms of procedure and where practical points arise—such as where a child should give evidence or how they should be enabled to participate in the proceedings. Unfortunately, the dynamics in the case are quite typical of the most difficult private law applications that come before the court and it can often be thought that a child might be distressed or even emotionally harmed if they play too active a role in the proceedings.

Where the child is deemed to be competent to give instructions directly to a solicitor, it can be particularly difficult to determine the extent to which that child should be 'drawn into' the litigation and how best to ensure that their voice is heard. Clearly, a balance must be struck between these two—sometimes competing—interests, but if appropriate steps are taken then there really ought to be no reason why a competent child should not be able to play an active role in the case. There is perhaps a tendency to be risk averse and while, of course, each case is different and each child is different, this case suggests that we may not need to be so cautious, provided appropriate safeguards are in place. The benefits for the child in having a say, and addressing the court in evidence, should not be underestimated in appropriate cases, and the fact that the child's voice and the court's decision may conflict is not a reason to shy away from this. The present case is an excellent example of how to manage this difficulty.

Peter Jackson J expertly demonstrates how to achieve a balance between writing directly to a child in engaging and age-appropriate terms, and covering the formalities that are required in any judgment. Despite its unusual form, the letter

makes clear the legal principles that must be applied, the court's assessment of the witnesses and conclusions based on the evidence heard. The judge's decision is clearly set out, along with the reasons that underpin it. There is a risk that not all judges would be able to achieve this, and so practitioners should be careful not to be seduced by the refreshingly direct and modern form that this judgment takes, and instead maintain a forensic scrutiny of the elements of the judgment and, where appropriate, seek clarity or elaboration where necessary. It is easy to see that disgruntled litigants may challenge decisions given in this way, and it is essential that judges and practitioners bear this in mind.

How does this case fit in with other developments in this area of the law? Do you have any predictions for future developments in this area?

What we can see from this judgment is the lengths to which the judge went to ensure that this young person, whom he had considered to be under a significant degree of pressure from his father, was engaged in the proceedings and that he was able to participate as fully as possible.

Although not questioned directly by the parties, the child gave evidence and answered five pre-prepared questions from each of his mother and father, and five questions from his own solicitor. The judge asked the questions posed by the parents, which had the effect of shortening the child's evidence but also, it must be assumed, given the dynamics in this case, reducing any tension or risk that the child's evidence might be affected by the person asking the question. It is unclear whether a formal *Re W* hearing took place (see *Re W (children) (abuse: oral evidence)* [2010] UKSC 12, [2010] All ER (D) 29 (Mar)—it is assumed it would have done—but there are a host of special measures that can be put in place to allay any concerns that a child giving evidence might in some way be emotionally distressed as a result of that process, and the methods employed in this case are just a few examples. Practitioners and courts must think creatively and look to enable the young person at the heart of the case.

Most important of all is the form of the 'judgment' given in the case. Family law proceedings are, by their nature, personal to those involved in the litigation. That is one of the reasons many of us were drawn to this particular area of the law. Family law decisions, therefore, should also be personal. The judge in this case, knowing that the outcome of the final hearing would not be what the child—at least overtly—wanted, goes to great pains to ensure that the reasons for his decision are communicated clearly and accessibly.

By choosing to write a letter to the child, the judge was able to address him directly in a personal and direct manner—which was crucial, given the concerns that the child had effectively taken on his father's case to a certain extent. The letter is particularly impressive given that some rather difficult messages needed to be given to the child following the judge's conclusions about, for instance, his father's personality, the poor preparation of the application and the degree of pressure on the child. Despite its no doubt tough content, in its directness the letter recognises this young person's maturity and avoids patronising him. Enabling a young person to take part in the proceedings and treating them with maturity and respect are two sides of the same coin. Perhaps we will see more decisions communicated in this way in the future, confirming that the child—rather than the adult—is at the centre of the process.

Interviewed by Duncan Wood.

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