

Guidelines for Judges Meeting Children who are subject to Family Proceedings

Produced by the Family Justice Council and approved by the President of the Family Division. April 2010

In these Guidelines –

- All references to ‘child or ‘children’ are intended to include a young person or young people the subject of proceedings under the Children Act 1989.
- ‘Family proceedings’ includes both public and private law cases.
- ‘Judge’ includes magistrates.
- Cafcass includes CAFCASS CYMRU.

Purpose

The purpose of these Guidelines is to encourage Judges to enable children to feel more involved and connected with proceedings in which important decisions are made in their lives and to give them an opportunity to satisfy themselves that the Judge has understood their wishes and feelings and to understand the nature of the Judge’s task.

Preamble

- In England and Wales in most cases a child’s needs, wishes and feelings are brought to the court in written form by a Cafcass officer. Nothing in this guidance document is intended to replace or undermine that responsibility.
- It is Cafcass practice to discuss with a child in a manner appropriate to their developmental understanding whether their participation in the process includes a wish to meet the Judge. If the child does not wish to meet the Judge discussions can centre on other ways of enabling the child to feel a part of the process. If the child wishes to meet the Judge, that wish should be conveyed to the Judge where appropriate.
- The primary purpose of the meeting is to benefit the child. However, it may also benefit the Judge and other family members.

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.

- 6. If the meeting takes place prior to the conclusion of the proceedings –
 - (i) The Judge should explain to the child at an early stage that a Judge cannot hold secrets. What is said by the child will, other than in exceptional circumstances, be communicated to his/her parents and other parties.
 - (ii) The Judge should also explain that decisions in the case are the responsibility of the Judge, who will have to weigh a number of factors, and that the outcome is never the responsibility of the child.
 - (iii) The Judge should discuss with the child how his or her decisions will be communicated to the child.
 - (iv) The parties or their representatives shall have the opportunity to respond to the content of the meeting, whether by way of oral evidence or submissions.