

Children caught up in divorce disputes

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Children and young people in the middle of a conflict between their parents usually have strong views about what is happening to their family. Parents want the best for their children but it is not always easy to identify what is 'the best' especially when parents are in the process of separation. Differences about how to look after your children that were tolerated within the relationship can become a source of intense dispute if you separate. Sometimes one parent might see themselves as the spokesperson for their children to the exclusion of the other parent, refusing any co-operative attempts to negotiate about arrangements for the children.

I am a family divorce lawyer and mediator at Hopkin Murray Beskine Solicitors. These issues arise for many parents who are separating, who might seek legal advice and/or use mediation. Possibly their children are directly involved in the mediation.

The Children Act 1989 states that decisions made about children and young people must be in their best interests. The United Nations Convention on the Rights of the Child states the wishes of children are critical to decision making. Yet how do we know what is the best for children in a legal environment, when courts or other professionals are involved? The court can appoint a professional to talk about their wishes and feelings or even to represent the child, even giving them legal advice within court proceedings. However, the views of that independent professional may be far removed from the parenting styles of either parent. In cases about children and young people, the court has to address how their wishes and feelings are to be taken into account, if at all.

The Ministry of Justice has made a commitment to translate these principles into practice so that any child or young person of 10 years and older should have access to a judge, and some input into mediation. No clear plans have emerged as yet however:



A fully qualified mediator can invite the child into the mediation process if both parents agree. The parents and mediator look carefully at how to involve the child, including what would happen if their child did not want their views be passed on to their parents. The child would meet the mediator without either parent being present, and discuss their wishes and feelings including agreeing what information is given to their parents. This can be extremely effective but it has to be done very carefully so as not to cause the child or young person to feel that they are being asked to take sides. This can quickly lead to very polarized views which become part of the ongoing partnership dispute rather than a parenting issue.

A good starting point if you have a dispute with the other parent that you do not feel you can resolve just by talking together is to consider using mediation. You should also make sure you are realistic about issues that may need compromising. To do this, you need to understand how a court would interpret your disagreement.

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