

## **NYAS' response to the DCA Consultation Paper**

### **Confidence and Confidentiality- Improving transparency and privacy in the family courts**

The National Youth Advocacy Service (NYAS) is a unique 'not for profit' children's charity which offers socio-legal advice, information, signposting and advocacy services to children and young people throughout England and Wales. The Charity works to support the UN Convention on the Rights of the Child, serving children and young people aged 0-25.

NYAS is committed to Article 12 of the UN Convention on the Rights of the Child, which 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  
And

'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'

NYAS provides Separate Representation under Rule 9.5, the object of which is wherever possible to protect the child or young person from the damaging effects of being caught up in legal proceedings. The Consultation Paper highlights for us as an organisation, the importance of children and young people being adequately represented within court proceedings, where those proceedings are likely to be public in the sense that they can be accessed by the media.

The need for public confidence referred to in the Consultation Document must be weighed against the need for the greater confidence of children and young people in the legal system, whether in public or private law proceedings, which they have been caught in through no fault of their own.

We are pleased that NYAS' young people, were part of the CAFCASS/FJC Young People's panel whose views have been submitted directly to the DCA.

NYAS feels that there is an urgent need for the DCA to ensure it addresses through the advice of experts in the childcare field an understanding of the needs of vulnerable children and young people and the likely emotional impact for children of a loss of privacy in respect of family matters. The consultation paper acknowledges that there are very good reasons for personal confidentiality. We must ensure that it is recognised that a child's need for privacy and protection from media intrusion differs substantially from those of adults is protected. Furthermore the difference in individual children's age and understanding, gives rise to a further need for increased levels of support to safeguard their privacy, whilst allowing them to be able to communicate effectively with the court and ensuring participation and engagement.

It is important that the views of the children and young people who have responded to the paper are given due weight. Children are not always as resilient as adults assume they are and the likely impact for them of the exposure of their family conflict within a public arena must be considered in the context of likely harm to their future development.

### **Consent**

It is important that the consent of all those involved in the proceedings is obtained and that there is an understanding of the likely implications of having given that consent to the possible attendance of the media at the proceedings. The consent must be an informed consent and we question the public interest in care proceedings. It is a concern to us that there should be a strong public interest in the care cases which result in the eventual adoption of the child. It is our view that children and families under stress may find it difficult to fully comprehend the long term repercussions of publicity.

### **Delay**

It is of concern that cases where the consent of all parties is not forthcoming, may cause further delay and an increase in legal costs and hearing arguments about the appropriateness of the media being allowed access to the proceedings.

### **Meeting the Judge**

NYAS has evidence of only a very small number of cases where children attended at court or met with the judge;

#### Case study 1

NYAS invited Judge to write or speak to a 9 year old, living abroad, who had expressed fears about the Judge, someone the child didn't know, making such major decisions about the child's life, (residence and contact). NYAS suggested to the Judge that it would be helpful if he would explain the judgement. Whilst the Judge did not refer to the request in the order, the Judge quoted the child's words, contained in the NYAS report to encourage the parents to reach an agreement.

#### Case study 2

Care & secure accommodation case. Young person speaks to the Judge every time it is in Court. The young person concerned is 15yrs of age, and although the proceedings did not start with her attending every Directions Hearing, it is recognised that it has been useful. The Judge has got to know the girl very well and she feels a part of the proceedings. The Judge concerned is a very "hands on" Judge who is able to put young people at ease and is proactive when a young person has requested to come to Court.

#### Case study 3

Judge spoke to 14 year old in open court in front of NYAS caseworker and her solicitor. She was a competent child and attended court. The LA and parents were asked to leave. She spoke to the Judge about her views and made it clear that she wanted to give evidence. The judge asked and she explained to him what she wanted. He listened very carefully to her. The Judge sought NYAS Caseworkers' advice and

opinion throughout. The girl left court when her mother was giving evidence as this was too painful for her.

#### Case Study 4

Two children, aged eight and seven told the NYAS caseworker that they would like to talk to the Judge.

The father was seeking overnight contact and the children had very negative views about their father, which the father refused to accept.

The children's request was passed to the Judge who wrote to them saying that he would not want to meet with them at that time but would review this decision, if necessary. The case finished at the next hearing and the Judge did not meet the children whose views were clearly set out in the NYAS report.

#### Case Study 5

A 12 year old really wanted to speak to the Judge, as there had been a previous contested residence hearing in which the Judge accepted that the child's true wishes and feelings were accurately presented on her behalf by her mother. In fact the mother's representations on the child's behalf were inaccurate. The child was devastated by the original decision that she should remain with her mother and she badly wanted to be allowed to speak for herself when the matter came back before the court.

It was agreed that she should go to Court and speak with the Judge on the first morning of the Final Hearing. Her mother then conceded residence the day before the Final Hearing, so the girl did not attend. The young person was very happy with the outcome of the Hearing.

#### Case Study 6

Child was a 14 year old Nigerian who was the subject of a Care Order. Child had been granted British Citizenship and was intelligent and articulate. Mother had schizophrenia and father resided in Nigeria.

Mother applied for discharge of Care Order. With assistance of NYAS Caseworker child was able to inform mother that child did not want to return home to mother's care. Mother wished for case to continue.

Child wished to speak to Judge. Judge arranged to speak to child after the hearing but before Judgement. NYAS Caseworker and child saw Judge together. The Judge asked questions relating to matters that had arisen in the hearing. The Judge also gave child the opportunity to expand on his views about the mother's application.

#### Case Study 7

NYAS have had experience of a case where the mother accompanied the children when they met the Judge. The mother said that one of the children would not meet the judge without her. Although the children said that they were pleased to have met the Judge. It was our view that the mother's presence affected their ability to speak freely.

### Case study 8

Prior to NYAS involvement, two children aged ten and eight had met the judge and told him that they did not want any contact with their father. They believed that would be an end to the proceedings and were very disappointed when it was not.

As is shown in the case study examples given, NYAS have on several occasions taken children to visit the court when they have expressed an interest in seeing where the decisions are made. They do not always ask to see the Judge. NYAS has found that it can help the children put the proceedings in context and is a useful part of clarifying roles and proceedings and of establishing the child's views. It gives them a chance to ask questions/make comments that they may not otherwise do and which can be incorporated into the NYAS report.

NYAS would want to ensure the child sees the Judge if the child was asking to, and was clear about what s/he wanted to say. In these situations NYAS think it is important that the Guardian and/or solicitor brings the child so that there is the opportunity to support the child and to answer questions after the meeting. NYAS has concern about taking children to meet judges routinely, as there is the potential for the child to expect more than the judge can deliver.

Some children do like to meet the person who adjudicates on the decision that will affect their life, some do not. Some children can not manage or make use of such an experience. Some children caught up in intractable disputes are very aware of the conflicting issues, given the choice do not wish to become involved. Most children however do want a clear account and record of what decisions were made and how they were reached.

There are many judges and FPC Magistrates who are not necessarily skilled or trained in dealing sensitively with children and young people direct within the court setting. Training would need to be resourced to ensure that meeting the Judge was a positive experience.