

Children Giving Evidence to Become More Common in Family Proceedings?

When a couple separate or divorce, they will often be able to agree the arrangements for their children. If they cannot, then there are a number of services, such as Mediation, Parentline Plus, and Family counselling organisations who can assist.

It is unlikely therefore that a Court will get involved unless the children are in danger, or somebody makes an application to the Court.

The recent Court case of *Re W* (2010) has raised the question of whether oral evidence given by children is to become more commonplace in family cases.

This case involved a child aged 14 alleging that her stepfather had seriously abused her. The lower Court refused the stepfather's application for her to be called as a live witness, on the basis that children were only called to give live evidence in exceptional cases. The stepfather appealed the decision, and the Supreme Court allowed his appeal. The Court's ruling in that case was that the decision to call a child to give evidence should always be balanced with a defendant's right to a fair trial. Family Law Judges have to weigh up whether the right to a fair trial outweighs the adverse effects on children of giving evidence live in Court. Factors such as the child's age, maturity, whether they understand the difference between right and wrong must all be taken into account. The Court also provided guidelines for taking evidence from children.

So, does this mean that we will be seeing more children giving oral evidence in family cases? This recent Court decision could result in that, but in reality, the result of the above balancing act may mean that the decision is made not to call the child after all.

For further advice on family law matters, and a free initial 30 minute appointment, please contact **Heather Weavill of Alison Fielden & Co**, The Gatehouse Dollar Street, Cirencester on **01285 653261** or at **hweavill@alisonfielden.co.uk**. Heather is an Accredited Member of Resolution specialising in children matters.