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Children's voices in family separation – what are their rights, and the outcomes when they participate meaningfully?

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RESEARCH EVIDENCE

Key messages:

- **Mapping Paths to Family Justice** (2011-2014): mediation tends to be child-focused rather than child-inclusive with adult agendas often drowning out attempts to remain child-focused.
- **Creating Paths to Family Justice** (2015-2017): Strong message from the Family Justice Young People's Board (FJYPB) was, 'It is better to not ask for our views than to ask but not listen to us.'
- **The HeaRT Project** (2019-2022): The mental health and well-being benefits to young people of being empowered to participate meaningfully in the decision-making when parents separate go far beyond simply helping to progress the case.

ARTICLE 12

Article 12 -

1. 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.
2. 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.

ARTICLE 12: 'SHALL ASSURE'

Article 12 gives no 'wriggle room'

- Elsewhere in the UNCRC, State Parties are required to 'take appropriate measures to ensure' (Article 22) or 'use their best efforts to ensure' (Article 18).
- Article 12 requires them to 'assure' to the child the means to participate meaningfully.
- As General Comment No 12 clarifies, 'shall assure' is a 'legal term of special strength, which **leaves no leeway** for State parties' discretion' (UNCRC General Comment No 12: 19).



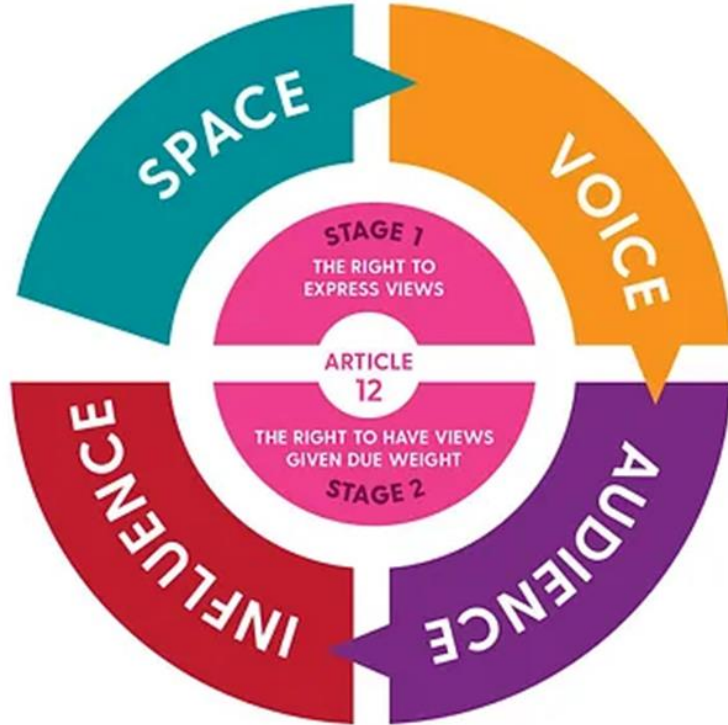
*'It's not the gift
of adults. It's the
right of the
child.'*

(Lundy, 2007)

Hearing from the
child *'must make
some difference'*.

(Archard, 2020)

The Lundy Model of Child Participation



Space: Children must be given the opportunity to express a view.

Voice: Children must be facilitated to express their views.

Audience: Children's views must be communicated to someone with the responsibility to listen.

Influence: Children's views must be acted upon, as appropriate.

INTRINSIC V INSTRUMENTAL

- 'Listening to the child should be for **intrinsic** and not **instrumental** reasons. The latter have to do with what a child's views tells us about what it might be best to do for the child... By contrast, to value the child's views for intrinsic reasons is to see the child as someone who has a view about what makes a difference to their life. We ought to respect someone capable of forming a view even if we disagree with the view and even if it does not, ultimately, make a difference to what we do.'

UN GENERAL COMMENT NO. 27 (2024)

The UNCRC Committee is consulting on a draft General Comment (no. 27, 2024) to identify practical, legal, social and cultural barriers hindering children's **right to be heard**, including in informal processes.

- The aim is to make State and **private actors** more accountability in the fulfilment of their obligations.
- The General Comment will provide guidance on how to:
 - empower children to know their rights;
 - adapt the justice system to make it child-friendly.

INCORPORATING THE UNCRC

- 'The research shows that incorporating the UNCRC into domestic law provides a platform from which other legal and non-legal measures develop. Positive consequences of how children's rights are perceived and implemented in practice, that would be difficult to achieve through other means, flow from incorporation.'

Lundy et al (2013:15)

PRACTICE DIRECTION 12B: PARA 4.4

PD12 4.4: Children should be involved ... This is just as relevant where:

- (1) the parties are making arrangements **between themselves** as when:
- (2) arrangements are made in the context of **dispute resolution ... away from the court,** and/or
- (3) the **court is required to make a decision** about the arrangements for the child.

FAMILY MEDIATION COUNCIL CODE OF PRACTICE

6.6.1: **All children and young people aged 10 and above should** be offered the opportunity to have their voices heard directly during the Mediation, if they wish.

6.6.2: **Where the Mediator and the Participants agree that it is appropriate** to consult any children directly, the consent of those children must first be obtained.

WHAT DO CHILDREN SAY THEY WANT?

Avoiding tokenism requires us to implement processes that match what children say they want when parents separate. This includes:

- Understanding that 'participation' extends well beyond 'voice';
- Giving them a range of options to express their views and be heard;
- Equipping them with information to understand the family law process;
- Providing mechanisms for children's direct communication with professionals in the decision-making process;
- Being involved in decision-making.

Dimopoulous et al. (2025)

See also Barlow et al. (2017)

CHILD'S VOICE IS MUTED IN COURT

Many children have little or no voice in court proceedings when parents separate:

- Only 38% of cases in England (36% in Wales) have a Section 7 report and almost half of cases have no marker of participation at all (Hargreaves et al, 2024)
- 'Children who have experienced domestic abuse go unheard... through lack of consultation or are muted in various ways' (The Harm Report, 2020)
 - 'Although, by statute, the welfare of the child is our paramount concern, the child is, by and large, completely invisible in court.' (Sir James Munby, 2015)

CHILD'S VOICE IS MUTED OUT OF COURT

Many children have little or no voice in the decision-making out of court when parents separate:

- Only 26% of children aged 10 and over are consulted in mediation (FMC, 2019)
- 'Despite the lip service paid to the importance of being child-focused in [all out-of-court] processes, it could be difficult in practice to retain that focus.' (Barlow et al, 2017)
- Almost half of separating parents decide arrangements for the children without engaging in mediation or issuing court proceedings (Barlow et al, 2017). Little is known about the extent to which these children are consulted.

BETTER OUTCOMES

Research tells us that when children are consulted:

- They tend to be **more satisfied** with the arrangements (Butler et al., 2002);
- Arrangements tend to be **longer lasting**, father–child relationships are better, and parenting is more cooperative (Walker and Lake-Carroll, in Family Mediation Task Force Report, 2014);
- The adverse effects of parental separation can be ameliorated by **reducing parental conflict** (McIntosh et al., 2008, Fortin et al., 2012).

THE HEART PROJECT

In the HeaRT project (2020-21) we considered the role that child inclusive mediation (CIM) might play in promoting paths to **better mental health and wellbeing** for young people whose parents separate by interviewing:

- 10 relationship professionals
- 20 CIM trained mediators
- 12 parents and
- 20 young people

Additionally, by running 5 focus groups with young people.

CHILDREN VALUE A VOICE

Jonny

“I mean it's their family too, **they should have a right** to be able to, you know, make the decisions about how it's going to move forward.” (Jonny, young research participant)

Kay

“... young people really, really value being included ... the most helpful thing you can do is just give [children] a forum in which they can talk, ... and be heard ... **children need to have a voice because it's their life.**” (Kay, relationship professional)

Young people want “a bigger voice more of the time” (Carson et al, 2018: 68)

GIVING CHILDREN A VOICE HELPS THEM RECOVER

Helps to process grief

[When parents separate, without a voice, young people struggle to] “**identify the loss or put into language what is happening [so], they cannot grieve and come to terms with it.**” (Jacob, relationship professional)

HELPS TO RESOLVE MATTERS

**Gives you
the
answers**

“When the children are at the centre ... it makes it easier because they are the focus and if they are the focus, and you both love them, **it actually gives you the answers.**”

(Tanya, parent who had experienced child-inclusive mediation)

HAS WELL-BEING BENEFITS FOR CHILDREN

Young people spoke of benefits that went beyond progress:

- “It gives [young people] a chance to talk about their feelings and ... a sense that **somebody is there for them**, that they have somebody to ... talk to.” (Ellie)
- “I liked seeing [the mediator] because ... with things ... that I was worried about or didn't know about. It just made me feel a bit **more aware of what was going on.**” (Chloe)

HAS WELL-BEING BENEFITS FOR CHILDREN

Young people spoke of benefits that went beyond progress:

- “It opened me a lot more and made me a lot more confident to speak to my [parents] about things, which just made a lot of stuff much, much easier **and took a lot of stress off my chest.**” (Alfie)
- “I think it helps [young people] in that ... they have got a voice, and they are being respected ... somebody has heard them ... I also feel like **it's actually quite cathartic** for children to be able to kind of explain what's going on to someone and [have] someone to listen to them.” (Anna)

KEEPS CHILDREN SAFE

- “I was scared that like if I said something to my dad ... he would think it's all my mum's fault that I am saying all that which it isn't because **I really do think that, and to say it to another person and know they won't go back to him just really made me a lot happier** [about] the situation.” (Young person who had experienced CIM)

WHAT NEEDS TO CHANGE?

Statutory change?

- Incorporate the UNCRC – so that it becomes a question of how not whether we hear from young people in the decision-making when parents separate.
- Expansion of the definition of parental responsibility in Children Act 1989, s 3 to include a duty to consult young people on important decisions.
- Expansion of the scope of the Children Act 1989, s 1(1) paramountcy principle to include non-court processes.
- Better enforcement of PD12B 4.4 – expectation that children's views will be sought when parents agree in mediation (as well as when they agree directly).

WHAT NEEDS TO CHANGE?

Mediation practice - what needs to change?

- Re-conceptualise CIM to embed a notion of 'relational family autonomy' - collective decision-making beyond parental views to directly include children's views as the default, where appropriate.
- Adopt the Lundy model of child participation as a framework for the FMC against which to judge article 12 compliance of its reimagined CIM offer.
- Requirement that the mediator records how the child's views were incorporated and, if the child was not invited to take part, the reason.
- Code of Practice for CIM covering the invitation to the child, hearing from the child, feedback to parents and the child on reason why decisions were made.

WHAT NEEDS TO CHANGE?

Practice change?

- Increase awareness among parents and children by having information on your website or in your child contact centres to complement wider awareness-raising in schools and other advice and information networks.
- Familiarise yourself with the local and online assistance available to parents and children so that you can signpost them to good quality, rights-based information and support.

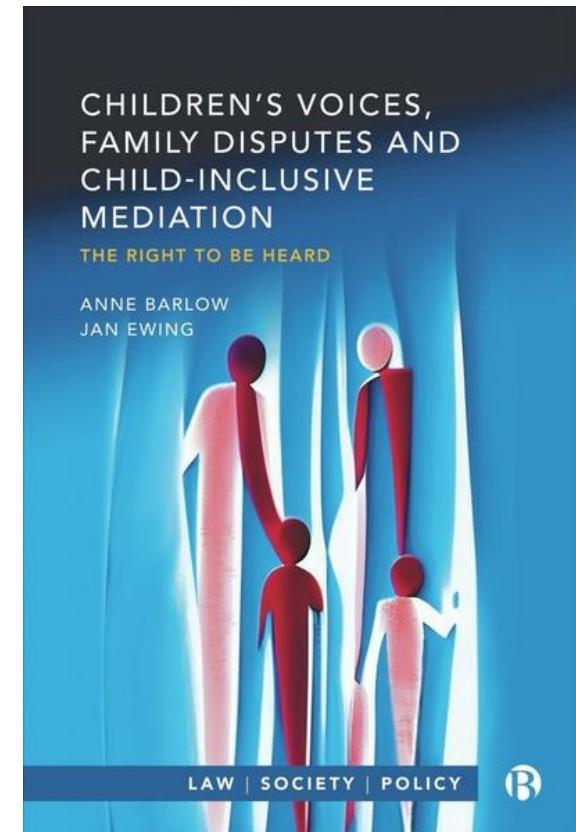
THANK YOU FOR LISTENING

For further details about the HeaRT project, see:

- Barlow, A. and Ewing, J. (2024) *Children's voices, family disputes and child-inclusive mediation: The right to be heard* (Bristol University Press).
- For a briefing paper on the Heart Project see:
[https://www.exeter.ac.uk/v8media/universityofexeter/collegeofsocialsciencesandinternationalstudies/lawimages/familyregulationandsociety/pdfs/The Healthy Relationships Project Report and Key Findings.pdf](https://www.exeter.ac.uk/v8media/universityofexeter/collegeofsocialsciencesandinternationalstudies/lawimages/familyregulationandsociety/pdfs/The%20Healthy%20Relationships%20Project%20Report%20and%20Key%20Findings.pdf)

(The link needs to be copied into a new tab to work)

- For a video for clients on CIM see: Tom's Story.



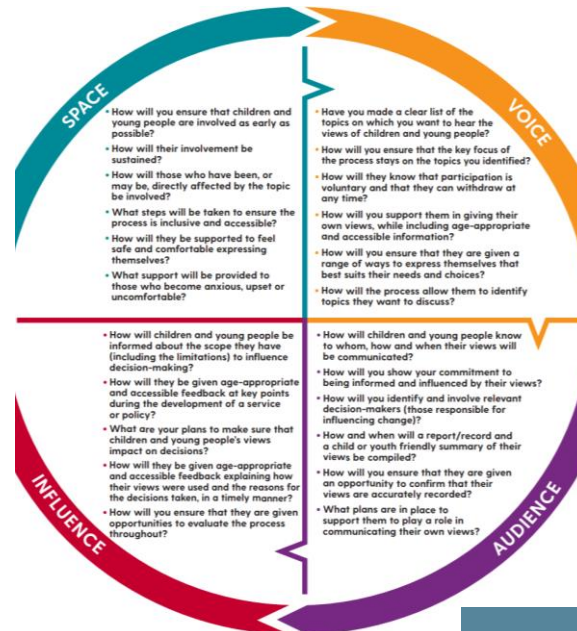
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Planning Checklist

This checklist guides you on how to listen to children and young people and involve them in decision-making when you are developing policies, plans, services, programmes, governance, research and legislation at national, local and organisational level.

You should inform children and young people that they have the right to a voice in decision-making and that you will take their views seriously.



Space: opportunity to express a view

Voice: facilitated to express view

Audience: child's view must be listened to

Influence: child's view must be acted upon

The Lundy Model of child participation

(see also evaluation checklist at: [Lundy model evaluation form](#))

