



# Why judges write to children

## **The President has published useful guidance for judges on how they might inform children of the reasons for their decisions¶**

On 26 February 2025 Sir Andrew McFarlane, President of the Family Division, published a toolkit entitled “**Writing to children – A toolkit for judges**”. It was produced in conjunction with the Family Justice Young People’s Board (FJYPB), which provided the views of children and young people who have had experience of the family courts, and with the assistance of judges, lawyers, researchers, academics, social workers, clinical psychologists and communication experts who work with children and family courts.

The purpose of the toolkit is to help judges feel confident in writing to children. It is an easy read and provides practical guidance/top tips as to the things to consider when writing to children with examples of language, tone and format drawn from previous judges’ letters to children.

### **Why should judges write to children?**

***Decisions made by judges in family proceedings are life altering for the children they concern, and a letter enables a judge to ensure their decision is explained to the child.***

Research indicates that children often feel left in the dark about the court proceedings they are the subject of, and the more children feel they have been listened to, the more satisfied they are likely to be with the decision made in the proceedings (see, for example, research by Rehill *et al*, 2022 and the 2010 CAFCASS study, both cited in the toolkit). A letter from the judge to the child can help with the child’s life story work. The letter also provides a document that the child can continue to



refer to throughout their life.

***Letters ensure that the child is also told the reasons for the decision (in an appropriate manner) and how their wishes and experience informed the decision-making process.***

There is currently no formal mechanism for decisions to be communicated to children at the end of court proceedings. This is particularly so if the children are unrepresented in the proceedings. Parents/carers are often left to explain the outcome to children, and this can lead to outcomes not being communicated in a child-focused manner, which can harm children. A letter from the judge concerned enables children to be told what was decided but also why it was decided, and how the children's wishes and feelings informed the decision-making process.

***Court proceedings can be emotionally charged and it can be difficult for parents/carers involved in court proceedings to remember exactly what happened and why. Judicial letters provide a very helpful document that children can retain for future reference.***

At times of high emotion, individuals remember less and/or it can be harder to make sense of things. A judicial letter conveys information to a child in a calm manner and provides them with a document that they can continue to refer to so as to process and understand the court's decision.

## **Reported cases where judges have written to children**

### ***Re A (Letter to a Young Person) [2017] EWFC 48***

In this case Mr Justice Jackson (prior to his elevation to the Court of Appeal) was concerned with a 14-year-old boy, "Sam".

The issue that the judge had to determine was Sam's father's application to relocate with Sam to



Scandinavia. Sam had to date lived with his mother, who opposed the move. Sam gave evidence and said that he wanted to move with his father. The judge decided that it would be contrary to Sam's best interests to make the move, and he should remain living with his mother until he finished education and was old enough to decide where he wanted to live for himself.

Unusually at the time, the judge decided to publish the letter that he had written to Sam which explained his decision. He acknowledged that Sam had expressed his views clearly and that he was impressed by the way that Sam gave his evidence. He also explained how he believed the father had lost sight of what was best for Sam. A section 91(14) order was made preventing anyone (including Sam) bringing further applications until Sam had finished his GCSEs.

The letter concluded:

"Sam, I realise that this order is not the one that you said you wanted me to make, but I am confident that it is the right order for you in the long run. Whatever each of your parents might think about it, I hope they have the dignity not to impose their views on you, so that you can work things out for yourself. I know that as you get older, you will do this increasingly and I hope that you will come to see why I have made these decisions. I wish you every success with your future and if you want to reply to this letter, I know that your solicitor will make sure that your reply reaches me.

### **"Ms D v Mr D [2022] EWFC 164**

In this case Recorder McKendrick QC was concerned with the welfare of two brothers (A and B) aged 11 and 8 years old.

In March 2018 HHJ Oliver had made a child arrangements order (CAO) which provided for A and B to live with their mother and father on alternate weeks and for half of the school holidays. In November 2021 their mother applied for a CAO and/or a specific issue order for A and B to relocate with her to Somerset and to spend time with their father. In December 2021 their father applied for a prohibited steps order and a CAO for A and B to live with him and spend time with their mother. The applications were joined and heard together.

At the conclusion of the hearing in August 2022 Recorder McKendrick QC decided that A and B should be promptly informed of the decision: their mother's application for internal relocation was refused; the shared care arrangement would continue; A and B would continue to attend schools in London; and A and B would continue to share holidays.



The judge appended a short letter to A and B to his judgment and directed that it be shared with A and B whilst they were in their father's care on a camping holiday.

### ***Mother v Father* [2024] EWFC 252**

In this case Her Honour Judge Suh was concerned with the welfare of four children (B, C, D and E).

In July 2022 the children's mother applied to spend time with the children. She had last seen B, C and D in 2016 and had seen E briefly in 2018. She made a further application in August 2024 for a specific issue order about education, an application to adjourn (not pursued) and an application for a psychological assessment of the children. The children's father cross-applied for a section 91(14) order.

The judge recorded that the children's wishes and feelings were very clear and powerful; they did not want to see their mother and did not want to speak to any more adults about her. The mother had a history of mental health difficulties, and she had moved around a lot which made it hard for the judge to assess how successful she was in managing her mental health.

The judge recorded that the children reacted really strongly in rejecting the mother's emails, gifts and videos to them and decided that it would be harmful to force the children to see their mother face to face when they were hostile to it and a good rapport was yet to be established by email. The judge directed that the mother could write to the children once per month. The judge also decided that the children's home education should continue, that there would be no psychological assessments of the children, and an order was made preventing the mother coming back to court in the next three years without permission of the court.

The judge included a letter to the children in her judgment explaining the reasoning behind her decision. The judge emphasised that she had heard the children loud and clear and had taken what they had said seriously.

### **What should a letter from a judge include?**

The President's toolkit emphasises that judicial letters should be tailored to the specific children and their individual needs. The toolkit provides the following guidance regarding the format of a judicial letter to a child, namely that the letter should:



- introduce the judge and their role in the proceedings
- explain the purpose of the letter
- include personal details about the children
- reflect on what the children have said
- explain who else was listened to as part of the decision-making process
- communicate the decision
- explain how the decision was made
- let the child know that the judge cares
- be forward-focused and emphasise co-operation
- use appropriate language when describing others' feelings
- reinforce that the children's future happiness matters

## **Other ways in which children can be involved in family law proceedings**

Judicial letters to children are just one way in which children have the opportunity to participate in family law proceedings.

Children can also speak with CAFCASS, local authority social workers and/or independent social workers.

As a part of the section 7 report process, children will be spoken to by CAFCASS, the local authority or the independent social worker (depending on who is charged with preparing the report) in order for the author to ascertain the children's wishes and feelings and to convey these to the court so they can form part of the judge's decision-making process.

Children can also meet with judges. The purpose of a judge meeting a child is not for the child to provide evidence or convey their wishes and feelings, but for the judge to explain their role to the



child and the process that they will follow to make their decision. The possibility of a child meeting with a judge will depend on their age and maturity.

The court can also make the children party to proceedings if it considers it in the best interests of the children to do so as per FPR rule 16.2. The court can appoint a children's guardian for the children that are party to proceedings as per FPR rules 16.3 and 16.4. The guardian will ascertain the wishes and feelings of the children and share these through a solicitor.

## **Child inclusive mediation**

A child inclusive mediator will speak to the children (usually aged 10 and over) to ascertain their wishes and feelings, which can then be shared with the parents in a separate mediation session. The mediator acts as a neutral facilitator of the discussions and should ensure that the children feel safe to express their views. The child will not be asked to make any decisions.

## **Will we see more letters from judges to children?**

The President acknowledges that the toolkit is a first step and it is hoped that it will lead to discussion and practice development. In his foreword to the toolkit the President said:

“My hope is that, like many things, once judges have used this toolkit and have written to children in a few cases, doing so will rapidly become the norm and no longer a task to be avoided. I would urge all judges to read this guide and to use it from now on in their cases. The publication of the toolkit has the potential to change the culture and to make the sending of a short letter from the judge the norm in all substantive cases; I earnestly hope that it does indeed do so.”

Whilst it is arguable that if children are more involved in court proceedings they may become more exposed to the conflict concerning them, the children and young people consulted for the purposes of this crucial judicial guide provided powerful arguments in favour of the use of judicial letters at the conclusion of court proceedings. As a consequence, it is highly likely that they will be produced much more frequently and we, as practitioners, should encourage their production, when appropriate.

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