



FACULTY OF ADVOCATES

Response from the Faculty of Advocates

HEARING THE VOICE OF THE CHILD IN FAMILY ACTIONS - FORMS F9.1 AND F9.2

The Family Law Reform Group of the Faculty of Advocates have been asked to give their views on the draft Form F9.1 and F9.2 which are the proposed replacements for the present Form F9.

As a general comment, we note that it is intended to consult groups of children on the content of the forms, and agree that this will be a valuable exercise.

We consider that the two stage process set out in the two new forms is positive, and a considerable improvement on the present Form F9. However, we do consider that it may be confusing, and perhaps emotionally difficult, for children to be asked for their views twice in quick succession, as is envisaged in the draft forms. It would be natural for a child to think that the judge wants him or her to fill in the form immediately with F9.1 and then to be puzzled or distressed by the receipt of a second form. There will be a risk that the child thinks his or her first answer was in some way unacceptable.

We understand that it is proposed that the Form F9.1 is sent to the child when the action is raised, and that the Form F9.2 is sent if and when a Notice of Intention to Defend the action is lodged by the other party. We would suggest that the Form F9.1 is sent to the child when the

action is raised to inform the child of the court action, but that it does not at that stage ask the child to state his or her views. The Form F9.1 could set out that the action has been raised, and what it is about, and indicate to the child that the court will write to the child again in a week asking them for their views, if they want to give those views to the judge. The Form F9.2 would then fulfil that purpose. The Form F9.2 would be sent out a week later than the Form F9.1, whether or not a NID had been lodged, in order that the child is given the opportunity to give their view to the court whether or not the action is opposed by the non-applicant parent. The court could not make an order without giving that opportunity in any event. Such a process would accord with the two roles which these forms serve, as discussed in our previous response. The first role is to tell a child that he or she is the subject of a court action and will have the right to express a view on the issues raised. The second role is to fulfil the obligation to give the child the opportunity to express a view about what is sought in the action.

In relation to the content of the forms, we consider that the layout and use of colour is child friendly, and most importantly the explanations of the process are clear and couched in simple language. We agree with the Committee that it would be very helpful for there to be a bank of sample sentences describing the main issue in the case to the child. The representation of the happy and sad faces will make the form easier for younger children, and opportunities are given for lengthy explanations for those children who wish to give their views very fully. We are of the view that the question “Would you prefer to say what you think in a different way?” will not necessarily be understood by children. It would be possible to provide a number of suggestions in the form by way of explanation, such as contacting the judge by email, with the email address provided, or by asking a teacher to communicate with the judge.

We consider that there should also be an indication to the child in this form that they may contact the judge during the court action if their views change, and an indication of how they can

do this. The form could also explain to the child that if there is a delay in the court action then their views may be sought again.

Finally, if our suggestion that the Form F9.1 does not seek the views of the child at that stage is not adopted, then we consider that the Form F9.1 should be clearer that another letter will be sent to the child if the court action is defended to give the child another opportunity to give their views. In addition the Form F9.2 should set out that the judge wanted the child to have another opportunity to give their view, so that the child is not confused as to why he or she has received another letter in very similar terms so soon.