

Petition, Petition, Petition....

The family justice system is suffering a great deal; of the many symptoms it harbours none is perhaps more visible than its lack of responsiveness to the myriad consultation papers and constant lobbying by politicians and pressure groups alike.

With gentle determination, families continue to search for signs of life in a listless system that is too weak to function. It was with that in mind that I decided to create petitions focusing on lifting some of the pressures off the process and to help reshape the culture around families and especially children, so that they fall in line with a more complete perspective.

It was this thinking that led me to create two petitions: the first, Court Culture, centres around the idea that most matters relating to family that find themselves in the courts are not really matters that qualify for legal intervention because they do not rest on matters of law. On Monday, November 9th, 2009 I had the privilege of chairing the Westminster Debate for KIDS (Kids in Divorce or Separation) which was jointly set up by the noted family law firm, Mishcon de Reya and myself. At the debate, we talked about children's welfare and it became apparent that judges and lawyers alike were dismayed by their increasing role as arbiters to decisions as straightforward as how many times a week should a child Skype with a parent or what day of the week should football practice take place? Their view was simply that non legal matters should not be the foray of the family justice system and as a parent who had gone through the courts myself in my own divorce, I was inclined to agree.

The advantages of removing family law cases from the court system are many: parents would be able to look to more effective alternatives like conflict resolution, life coaches and therapists, to support them during this difficult period, without judgment and in their own time. The family courts would be freed up to deal speedily with those cases that do require legal intervention, those that display an inherent risk of harm to either child or parent and would therefore remove a tremendous amount of pressure off the system as the divorce rate increases and the courts find themselves unable to conclude these marriages without unreasonable delay, expense and trauma to the families concerned. Petition: Court Culture asks the government to remove court access altogether unless risk of harm is present and to allow families to seek more suitable alternatives for a timely and healthy resolution to difficulties arising out of divorce and you can ask the government too, just by signing the petition online.

The second petition, Child Autonomy, rests on the idea that although the Children Act 1989 specifically asks the family law process to take into account the wishes and feelings of children going through the family justice system and to give those wishes and feelings due weight, this is unfortunately not happening and is not in itself an enforceable legal right. The system at present does not have the ability to really take its time in relation to finding out what children really think and feel; the process is protracted but the level of care and attention going towards trying to understand children and their needs is limited and dangerously so. With dwindling legal guardians, conflicting policy present within organisations like CAFCASS and a basic lack of understanding about children going through divorce, the system is unable to really give every child a voice, which Sir Potter promised the nation in 2008.

There is also a cultural issue present; our current family courts take the view that children are for the most part unable to express themselves rationally and are often relegated to status of onlooker at best and silent partner at worst. An outdated and antiquated system, like the draconian headmaster or mistress afraid of sharing autonomy lest their own be challenged, children are being silenced both directly by the process and indirectly by the “children must be seen and not heard” philosophy.

But this philosophy is being challenged already. In the field of medical consent, children are now given autonomy over their physical wellbeing and within reasonable contexts a child under 16 is able to consent to his or her own medical treatment without the need for parental consent or knowledge. Exceptions must and always will apply but the basic premise is that children who are able to think rationally must be allowed to do so and more than this, must be allowed to be a real part of any process involving them. As all parents know, it is our job to support and advise, but as our children get older, we have a duty to allow them to think for themselves in order to promote their independence which will ultimately serve them well in the future when they will need to take full responsibility for their actions. And if the House of Lords can award children the right to be the masters of their physical welfare, then the argument must follow that government should, within reason, acknowledge that children should be encouraged to be the masters of their emotional welfare too.

By making the consideration of a child’s wishes and feelings a legal right that must be taken into account, children will feel empowered and a part of their family’s destiny and the professionals working in the system will begin to look more closely at the family unit as a whole, which it remains despite and through divorce.

Petition: Child Autonomy asks our government to make the consideration of our children’s thoughts and feelings a legal right, which would fall in line with the Human Rights Act’s ethos and articles and would send a clear message to our family justice system: please listen to the voice of our children – they are the voice of Britain’s future.

If you feel as strongly as I do about these pressing issues, please show your support by signing these petitions. Thank you.

Natasha Phillips, Tuesday 24th November, 2009. (Published 1st December, 2009 in Wikivorce)