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SHALL WE LISTEN TO THE KIDS?

In 1878 a senior family Judge refused to take the wishes of the children into account when deciding an important issue because “it would be useless because a Court does not interfere between a father and his children because he is the head of the family and must have the control.”

Thankfully we have moved on considerably from this approach and reform, particularly in the last 50 years, has been significant.

New Statutory laws in the 60's and early 70's sought to increase the focus on the wishes, feelings and welfare of the young person, However, it was not until the concept of 'Gillick' competence arrived in the mid 80's that the powers of the parents to decide what was best for the children received some much needed balancing against what the children actually wanted themselves. In that case (which concerned the supply of contraceptives) the House of Lords held that children could be consulted when they developed to the point where they had sufficient intelligence and understanding. This was a controversial case and ultimately led to new thinking at a Governmental level and the introduction onto the statute books of the Children Act 1989. The arrival of law for kids!

Since its introduction in 1991 children law and practice has developed routinely and regularly. Children are now rightly represented in some legal cases; even those too young to talk-let alone pick up their mobile phone and text – may get their very own lawyer! They will usually take their instructions from an appointed Children's Guardian. Crucially when discussing any Orders that may be required the children are the main focus of the case and the adults are told to consider first the “best interests of the children” or that “the children's welfare is paramount”. How far we have thankfully come in 140 years!

To assist in children cases, the Courts regularly insist on safeguards to smooth the process and protect the young person's rights. The vexed and complex issue of a child giving evidence in a Courtroom is a classic example of the need for a reasoned balancing act between justice and protection and some of this Country's finest legal minds have been employed to ensure the right approach.

I was recently involved in a case where the young person not only met with the Judge privately before the hearing but was allowed into Court immediately afterwards. Admittedly this is rare but was entirely appropriate in the circumstances of that case. It was also a good

opportunity for that young person to take a positive experience - as opposed to a negative one - away with them.

Children are becoming more aware of their rights and we as sensible parents, have a responsibility to consider protecting those rights if we are truly committed to what is best for our children

So let's not just talk to the kids, let's listen to them.... it's what the Courts do!

At Wollen Michelmores solicitors, David Kendall is a Partner who deals with family and childcare cases across the firm. If you would like to have a discussion about this article or a similar matter, please call David on 01803 213251 or email David.Kendall@wmlegal.co.uk.