The Judicial Interview in Cases on Children's Best Interests – Lessons for Ireland

Aoife Daly*

> *... [I]t makes me so frustrated 'cos I cannot say it from my own mouth ... mum would go 'and your voice has been heard in court' and I would say 'NO it hasn't, it's only part of my voice.*' (14 year old boy with experience of family law proceedings).[i]

Introduction

Children now have a right to be heard in all proceedings affecting them, and to have their views accorded 'due weight', as this right is enshrined in Article 12 of the UN Convention on the Rights of the Child (CRC Article 12), an instrument which almost all nations have agreed to implement. Until recently in proceedings about their own interests, in questions for example about where they shall live on relationship breakdown and whether they will be taken into the care of the state, it was assumed that children should be excluded on the basis of 'protection'. It was thought that they should not receive information on proceedings in case it caused them upset, and that they should not be encouraged to give opinions in case they became over-involved in adult issues. Although reluctance to give children power in proceedings affecting them remains, there is now broad agreement that children should enjoy some level of involvement, at least in part because of the influence of CRC Article 12. It has been shown that children overwhelmingly want to be involved,[ii] that their involvement has proven possible to implement[iii] and that it is helpful for increasing the likelihood of successful outcomes.[iv] There is a chance that if children are not central to cases concerning them, their interests can become sidelined. As one young adult with experience of proceedings as a child puts it: "[E]verybody in the case is in pursuit of their own agenda and consequently that of the child is lost..."[v]

One way of vindicating the right of a child to be heard is a meeting between the child and the judge making the decision. There are many states, particularly those outside the common law system, in which children are heard directly by judges. Even in some states which are subject to common law, the judicial interview has become much more accepted and commonplace. Yet there is reluctance in many jurisdictions to encourage or even facilitate the judicial interview, for a variety of reasons ranging from perceived evidentiary issues to the lack of judicial training for such meetings.

Data is not collected on the extent to which children meet judges in Ireland, but there is evidence that it is a rare occurrence.[vi] Courts have a duty to hear children and to give due weight to their wishes not only under the CRC but also under domestic law. Section 24 of the Child Care Act, 1991 requires a Court to give due consideration to the wishes of the child having regard to age and understanding, and the enactment of the Children and Family Relationships Act 2015 incorporated the right of children to be heard in private law proceedings, although it is as yet unclear how this will be implemented.

In light of increased prominence for children's voices in proceedings in Ireland, this article considers international practice when it comes to judges meeting with children in cases in which their best interests are being determined. The piece considers the international law framework behind hearing children and where the judicial interview may fit into that. Experiences in jurisdictions where the judicial interview is more common are examined. In

New Zealand judges regularly hear children for example, and in the UK there is much discussion about whether such interviews should be encouraged. Questions around when and how interviews should be conducted are explored. The article concludes by considering the application in Ireland of lessons learned in this area.

How to Hear Views: The Choice of the Child?

There has been a large degree of attention accorded in the past 20 years to hearing children in proceedings affecting them. There has been significant debate on when and how children should be heard. My forthcoming book *Children, Autonomy and the Courts: Beyond the Right to be Heard* (Brill Nijhoff, forthcoming 2017)[vii] examines law and practice from all over the world in which courts make decisions about children. I point to the oft-forgotten fact that the under the UN Convention on the Rights of the Child, children should get to choose how they want to be heard in such proceedings.[viii] Although children usually have to settle for whatever avenue is available to them (and frequently there are none),[ix] in fact children should have choices as to how they are heard, for example whether it is communicating directly to the judge or indirectly via a guardian *ad litem* or letter-writing.

I argue that courts should support and prioritise children's own choices to the extent possible – there should be a high threshold to override them. Care must be taken to avoid pressuring children but every case is different.[x] In some cases, the fact is that children know the outcome that they want. Although it is tempting to ask 'at what age should children's autonomy be prioritised?' age is not always the main determinant in the matter. Factors such as individual differences play a great role in children's abilities to make decisions, and even young children are experts on their own situation.

There are many areas of inconsistency in how the law treats children across different areas of the law. When courts make decisions about children's best interests, the inclination is to 'protect' children. Yet they are potentially held criminally responsible at an early stage. Furthermore in areas such as medical law and the rights of adults with cognitive disability the inclination is to support an individual's autonomy. I argue in *Children, Autonomy and the Courts* that this is not done enough when decisions are being made about *children's* interests. Priority is rarely given to the matter of whether it is possible to support and uphold a child's wishes.

Part of this is the matter of *how* they are heard. I argue that children should have the option of speaking to the judge if they wish, and it should be down to the child herself, not to parents or judges, as to whether this happens. Though this may require changes to systems as they currently operate – many states, Ireland included, simply have not set-up easy means and procedures through which children can meet judges – that is not to say that it cannot or should not be done.

The Benefits of Judges Meeting Children in the Right Circumstances

The Committee on the Rights of the Child has expressed that under Article 12, children are to have the opportunity to be heard by the decision-maker directly.[xi] Importantly, many children too express that they wish to speak directly to judges.[xii] In a wide-scale study on children's views of proceedings affecting them in Europe, it was found that: "More than anything, they want to speak directly to those who take decisions about them."[xiii] Children frequently report

feeling that their views have not been accurately transmitted by relevant professionals. As one girl in England and Wales said of her guardian *ad litem*: "[S]he wrote down things that we didn't say and the report that came back wasn't what we'd said at all."[xiv] Many children feel that they will have the greatest chance of their wishes being taken seriously if they express them in person: "Because sometimes, if you tell your parent something and they tell the court, the court might not really believe them…but if you tell a part of the court's staff then they've got evidence of what you've said."[xv]

Even where they may not wish to do this themselves in their particular case, children overwhelmingly believe they should at least be offered the opportunity. In one Australian study 85% of children interviewed believed that children should have the opportunity to talk to the judge in chambers if they wished to do so.[xvi] They felt this would ensure acknowledgement of their position, and that it would lead to better decision making, though they did not assume that it would lead to or necessitate an outcome in line with their wishes.

In many states the judicial interview is a common occurrence.[xvii] In civil law systems children often meet with judges in proceedings concerning their interests. Children have a right to meet with the judge in certain circumstances in France and legal aid is even made available if children wish to be heard in the company of a lawyer, though the lawyer will not be an advocate for the child.[xviii] In Israel a pilot project was introduced whereby a comprehensive system was established for supporting children to be involved in family law proceedings. Judges had to consider in each case whether or not to hear children (with a presumption in favour of doing this), and every child participating has the option of speaking with the judge.[xix] The project was so successful that it has been extended nationally.

Mainstreaming the judicial interview has also proven successful in some common law states. In New Zealand, family law judges have long met directly with children, and there has been increased attention to the issue since the early 2000s, when efforts were made to learn from practice in Germany.[xx] Guidelines to assist judges on how and when to interview children in family law cases were developed in 2007.[xxi] Case law has established that the judge should exercise the discretion to speak with a child where she has maturity and/or firm views.[xxii] Judges are advised that, where they decide not to meet with a child, they should record the reason/s in the judgment.[xxiii] There is, therefore, some sense in this jurisdiction that judges should only refrain from meeting children where there is good reason for this.[xxiv]

The New Zealand guidelines also tackle evidential problems concerning parties' access to information by requiring the judge to make it known to the child that a record may be taken and that it may be accessed by the parties, though it is possible for content to remain confidential "when the welfare and best interests of the child may outweigh the requirements of natural justice."[xxv] If the child requests confidentiality, therefore, judges "may decide that the record (or the confidential part of it) shall not be made available to the parties."[xxvi] Therefore solutions have been found to legal obstacles which in many common law states are perceived as preventing such interviews.

In England and Wales judges have discretion as to whether to meet with children in proceedings concerning them, though such meetings are the exception rather than the norm.[xxvii] Nevertheless there is growing support in favour of such meetings. There have been suggestions in recent years that children should be provided with greater opportunities to meet judges, including by the President of the Family Court.[xxviii] A Sub-Group of the Family

Justice Council stated in 2008 that such interviews should be encouraged. In 2010, the Family Justice Council issued guidelines for judges meeting with children in family law proceedings (considered further below).[xxix]

In jurisdictions where children regularly meet judges, reports of how this works are overwhelmingly positive. Judges report finding them very useful – nine out of ten family law judges interviewed in Germany felt that the hearings with children were 'very' or 'fairly' meaningful'.[xxx] In the US, 75% of judges interviewed in Michigan reported the same level of positivity,[xxxi] with Ohio judges also very much in favour – "It's a great law…You see the case through the children's eyes…"[xxxii] In Israel, judges report that the meeting with the child contributes "a great degree" to their decision in around half of cases.[xxxiii] Children themselves generally report that they find these meetings very positive,[xxxiv] and in Germany children were generally found not to feel stressed in advance of and whilst attending judicial interviews. It has also been found in Germany that "[w]ithout exception the parents regard the judicial child interviews as a positive measure."[xxxv]

Therefore there is increased appreciation of the appropriateness in some cases for the judicial interview, and they appear to be valued by all involved. This inclines against the belief in common law countries that it is undesirable for judges to meet with children.

Making the Judicial Interview a Good Experience for Children

Of course, there are some important points to consider about what the judicial interview should involve in order for it to be a positive experience for children, and for it to meet principles of fairness. Judges clearly need training in children's rights and welfare and to be good communicators.[xxxvi] Meetings should have the consent of the child at all times, and it should be explained to them whether confidentiality can be guaranteed (often it cannot). Meetings should take place in the presence of a child welfare expert,[xxxvii] and preferably someone known to the child, as some children will find inevitably find it intimidating to meet alone with an authority figure who is a stranger to them.

Recent research in nine European states into children's experiences of justice proceedings[xxxviii] indicates that the demeanour and attitude of the judge is crucial. Children want judges to be "calm and friendly."[xxxix] Children greatly value an experience where judges are not overly-formal: "And the judge came. He was totally different than I imagined. He was very young and wasn't wearing a robe..."[xl] They also emphasise the need for decision-makers to avoid jargon, to show empathy, and to respect where children wish not to answer a particular question.[xli] Some of the children's suggestions on how professionals engage in child-friendly behaviour include ensuring that they:

- Take children and their situation seriously.
- Frame hearings as conversations between two persons of equal value.
- Have an informal attitude and create a relaxed atmosphere.
- Engage in "small talk" to make children feel at ease.
- Avoiding having too many people and strangers present.
- Ask questions that are appropriate, relevant, clear, concrete and use vocabulary adapted to the children's age.

- Explain to children the procedures and the reasons underlying decisions so that they can understand them.[xlii]

Whilst there is much that individual professionals can do in order to ensure good experiences for children, a broader systemic view must also be taken of the judicial interview in order to standardise good practice. There are many innovative steps which could be taken to avoid any distress to children – there could be videos recorded in advance by judges to outline who they are and what they do which could be played for children who wish to know more about proceedings and those who may meet with the judge. Lessons can be learned from many initiatives which are already being rolled-out in other jurisdictions. The TALE project in the UK, which aims to embed child friendly justice in the work of professionals in the courts, is at present designing many such online facilities to ensure more children's rights based justice proceedings.[xliii] In Scotland, where children regularly attend Children's Hearings in care and youth justice matters, a variety of practices have been developed to progress child-friendly justice including information DVDs for children, some developed by children themselves.[xliv]

There are definitely cautionary tales about how *not* to conduct judicial interviews. In Spain, where judges regularly speak with children, it has been established that they are not well prepared for this.[xlv] Children in Spain unfortunately report many instances of poor practice in judicial meetings, with interactions often leaving them angry and upset.[xlvi] In England and Wales *Re K.P. (A Child)* [2014][xlvii] involved an appeal in a case where a child was taken to the judge after school without warning,[xlviii] and asked 87 questions in the space of over an hour.[xlix] Strides are being made in both of these jurisdictions however – in Spain a specially prepared 'questionnaire' is being prepared for judges to assist them in the judicial interview.[l] In a child-led pilot project in England and Wales feedback sheets have been provided to children after meeting with judges in order to establish what works and what does not.[li]

It must be accepted that children have a right to involvement in proceedings affecting them and it is insufficient for cases to be overseen by judges who are untrained and/or unsuited to meeting with children.

The Judicial Interview as a Right of the Child

Another key issue is that there is a failure to see the judicial interview itself as a child's right. Even in states in which the judicial meeting is very common, judges remain firmly in control of whether it occurs or not. Note the discretion, for example, afforded to the New Zealand judge. Sometimes the discretion lies with parents, in spite of the fact that they may have a conflict of interest if their child's wishes do not incline with their own. In Ohio in the US judicial 'interviews' of children are a right of the adult parties, who can request the interview although the judge can decline.[lii]

There is also an unfortunate possibility that the judicial meeting could become perceived as a cost-saving measure – a replacement for the more thorough work of a child professional.[liii] Judicial meetings should be seen as simply a part of the process of hearing children, and an option that some children will wish to take-up, and others will not. Children will often need more general support from a professional such as a guardian *ad litem* to understand their case and the options available to them and to communicate indirectly where they wish. There should be many options for children to choose from, for example letter-writing to the judge

can be a less stressful alternative in some cases. This is a method which is relatively common, for example, in Scotland and England/Wales.

Another concern is that children may be pressured into the interview. In a context such as Ohio, where the interview is framed as a right of a parent, this certainly seems possible. Presumably in the context of judicial interviews this problem could be circumvented by ensuring that children are told expressly, as part of the information-sharing process which they should enjoy in relation to their proceedings, that being heard is *their* right, as is *refraining* from being heard.

What Ireland Can Learn from International Experience

As noted above, it is unknown in Ireland the extent to which judges meet with children, as data is not collected on this point.[liv] Information that *is* available suggests that it is rare, with children being more commonly heard indirectly through guardians *ad litem*,[lv] although it is likely that there is some regional variation.[lvi] In my own research in Irish District Courts, which involved approximately 33 days observing proceedings concerning child care and family law, I did not witness any cases in which the judge spoke to a child in chambers (or where any reference was made to such a meeting).[lvii]

Considering there are little if any resources set aside for such an exercise it seems fair to say that it happens very infrequently. Of course the guardian *ad litem* system in Ireland is an invaluable means through which children can be heard, particularly for those who may not wish to meet the judge. But whether or not a child will be appointed a guardian varies between judges and between regions.[lviii] There is also a lack of clarity around the role of the guardian[lix] and around criteria for appointment,[lx] and there is a lack of funding for this facility in family law cases.[lxi] It is likely that because of the lack of resourcing for guardians, where judges wish to get an objective sense of the wishes of children in family law cases, they will have no choice but to speak directly to children themselves.[lxii] This runs the risk outlined above of viewing the judicial interview as a cost-saving measure, rather than an option for children if they wish to use it.

In recent research in Ireland concerning children's proceedings, judges express reluctance to meet children directly: "I think perhaps there is a traditional fear in bringing children into a courtroom that it's not a place for a child…"[lxiii] "I tend to shy away from that. I don't think it's proper to expose a child to legal proceedings, coming to court, fretting and worrying."[lxiv] Practitioners working with children stated that there is a lack of consistency in the approach taken by judges in different courts. Chronological age appears to be the most significant factor as to whether judges will meet with children though there is no set guidance on this.[lxv] As with many areas concerning children's proceedings in Ireland, greater clarity is needed on how and when judges should meet with children.

Some points were set out in 2008 in *O'D v O'D*[lxvi] as to the best approach to the judicial interview. Mr Justice Abbott said he had received judicial training on talking to children directly in proceedings concerning custody and access orders. He outlined certain guidelines for doing so, including that judges should not seek to act as a child expert, the terms of reference should be agreed with parties beforehand; the judge should explain the nature and purpose of the interview to the children, including the fact that children will not have a determinative say; the judge should assess "whether the age and maturity of the child are

such as to necessitate considering his or her views"; and only speak to children speak in confidence if the parents agree.

As useful as these points are, they are not comprehensive and some aspects are problematic. Parkes *et al.* point to the fact that the *O'D v O'D* factors fail to acknowledge that under CRC Article 12 the process should begin with an assumption in favour of hearing children.[lxvii] Furthermore the guidelines focus on adult-centric concerns about securing the agreement of parents and compliance with principles of fairness. There is little emphasis on ensuring that children are comfortable (for example they may want to have a familiar person in the room during the interview), that children's consent is given at all times, and that children later receive feedback on how their views were weighed in the decision-making process.

Official guidelines are clearly needed. In England and Wales the 2010 Family Justice Council Guidelines for Judges Meeting Children in family proceedings encourages judges to help children to feel connected with proceedings concerning them, to assure children that their wishes have been understood, and to explain the nature of the judge's task. As for when children should be offered the opportunity to meet judges, a children's guardian (guardian *ad litem*) or lawyer should advise the judge (although children will not always have such a professional appointed in family law cases, which leaves this part of the guidance questionable). Age is relevant but should not alone determine whether a meeting is offered. If the judge decides that a meeting is not appropriate a brief written explanation for the child should be provided. The guidelines emphasise that the meeting is for the benefit of the child, not for gathering evidence. These are largely progressive guidelines which indicate a shift towards perceiving the meeting as for the benefit of the child involved.

A major issue in Ireland relates to the fact that the vast majority of judges dealing with child care and family law proceedings do not specialise in this area of law. It is crucial that judges are adequately trained if the judicial interview is to be a positive experience for children. O' Mahony *et al.* found that some judges in Ireland – primarily those based in one city and appointed after 2012 – had significant levels of training on children's issues, but beyond this training was often absent altogether. As one judge noted "I think it's no secret that the entire judicial model could be, would be assisted by more extensive training…it's a steep learning curve to even learn the language of it."[lxviii] The researchers note the geographical issues inherent in Ireland (rural areas are sparsely populated) and that specialisation may only be possible in areas with high volumes of applications concerning children,[lxix] but state that "this obstacle is hardly insurmountable, and a balance could be struck through combining specialist regional facilities in some areas with travelling specialist judges and refurbished facilities in existing court buildings in other areas."[lxx] All judges likely to encounter children's cases should and could be required to have some level of training on children's rights and welfare.

The physical facilities in courts where cases concerning children are a challenge for everyone involved, with poorly maintained buildings and crowded conditions the norm.[lxxi] The environment in which proceedings are held is often not conducive to child-friendly spaces and processes:[lxxii] As one professional stated in the research of O'Mahony *et al.*: "I didn't think it was really conducive for a family going in because it felt like a . . . cattle mart because there was so many people going in and out and people being called over and it was very, very dysfunctional for a family…"[lxxiii] There is broad agreement in Ireland that specialist family courts are necessary.[lxxiv] In a report of the Child Care Law Reporting Project

it was argued recently that there is a strong case for a specialist family court to be urgently established[lxxv] including appropriate waiting and meeting facilities in dedicated court-houses.[lxxvilxxvii]

There are models of reform and practice such as in Israel, New Zealand and England and Wales from which Ireland must learn. Specialisation in the area of family law and investment in infrastructure is necessary and the failure in Ireland to make the necessary reforms has aptly been described as "increasingly difficult to justify."[lxxviii] Ireland must invest the resources to ensure that it is not only meeting CRC requirements but leading the global inclination in favour of involving children in proceedings affecting them. This must include the opportunity for children to meet with decision-makers (unless there are strong reasons inclining against this) in line with CRC rights.

Conclusion

There are positive findings associated with the judicial interview from the perspectives of children, parents and judges. This runs contrary to the belief of many that it is undesirable for judges to meet with children. There is also a legitimate concern that judges need training in this area. Yet judges who make decisions about children should be trained in children's welfare and rights and should be well-suited to meeting with children. They are after all making crucial decisions in children's lives around where children will live and with whom they will have relationships. There are also concerns about facilities fit for children's presence – this obstacle is also resolvable.

I argue in *Children, Autonomy and the Courts* that even though it may be difficult to prioritise children's autonomy in proceedings when facing such systemic problems, there are short-term measures which can be taken. There is much that individuals can do – judges can ask as a matter of course whether children wish to meet them, and whether it is practical to facilitate that. It can be done in a way which takes account of children's school hours and the need to ensure that children should be seen swiftly rather than being kept waiting in busy areas. Parkes *et al.* highlight short-term systemic measures which should be taken – child care proceedings could be held in separate sessions in separate buildings from regular legal proceedings. Greater training of professionals and funding for GALs could be provided.[lxxix] Although adult parties also deserve better than they are currently experiencing in terms of poor infrastructure and lack of privacy for their family law issues, children's cases are supposed to be resolved in the best interest of the child and children have special requirements which must be prioritised.

There are legitimate reasons to be cautious about meetings between judges and children. That is not to say, however, that the problems are cannot be overcome. The first step is to accept 'hearing' children as a right of children themselves, rather than a discretionary favour. Children can sometimes feel like objects in adult disputes: "[T]he child is not a parcel to be labelled and sent to wherever someone else decides…"[lxxx] Meeting with the decision-maker where this is their wish can help mitigate such feelings.

References

Endnotes

* Aoife Daly is Senior Lecturer in Law at the School of Law and Social Justice and the European Children's Rights Unit at the University of Liverpool. She writes, teaches and advocates extensively on children's rights. Parts of this article are based on Aoife Daly, *Children, Autonomy and the Courts: Beyond the Right to be Heard* (The Hague: Brill Nijhoff, forthcoming 2017) and Aoife Daly, *The International Legal Right of Children to be Heard in Civil Law Proceedings Affecting them* (Unpublished Ph.D. Thesis, Trinity College Dublin, 2010) which included observations of proceedings in Irish District Courts 2008-9.

[i] Boy aged 14 expressing his wish that he had spoken directly to the judge in Gillian Douglas *et al.*, *Research into the Operation of Rule 9.5 of the Family Proceedings Rules, 1991* (London: Department for Constitutional Affairs, 2006) at 52.

[ii] See for example Richard Birnbaum and Nicolas Bala, "Judicial Interviews with Children in Custody and Access Cases: Comparing Experiences in Ontario and Ohio" (2010) 24(3) *International Journal of Law, Policy and the Family* 300; Judith Timms, Sue Bailey and June Thoburn, "Children's Views of Decisions Made by the Court: Policy and Practice Issues arising from the Your Shout Too! Survey" (2008) 14 *Child Care in Practice* 257; Patrick Parkinson and Judy Cashmore, "Judicial Conversations with Children in Parenting Disputes: The Views of Australian Judges" (2007) 21(2) *International Journal of Law, Policy and the Family* 160; Douglas, *ibid*.; Patrick Parkinson, Judy Cashmore and Judi Single, "Adolescents' Views on the Fairness of Parenting and Financial Arrangements after Separation" (2005) 43(3) *Family Court Review* 429.

[iii] See e.g. Tamar Morag, Dori Rivkin and Yoa Sorek, "Child Participation in the Family Courts – Lessons from the Israeli Pilot Project" (2012) 26 (1) *International Journal of Law, Policy and the Family* 1; Michael Karle, Sandra Gathmann, Gunther Klosinski, *Investigation into the Practical Implications of Child Hearings Conducted Pursuant to Section 50b of the German Act Governing Non-Contentious Proceedings* (University of Tuebingen, 2010).

[iv] Michelle Fernando, "Children's Direct Participation and the Views of Australian Judges" (2013) 92 *Family Matters* 41; Jennifer McIntosh "Enduring Conflict in Parental Separation: Pathways of Impact on Child Development" (2003) 9(1) *Journal of Family Studies* 63; Nigel Lowe and Mervyn Murch, "Children's Participation in the Family Justice System– Translating Principles into Practice" (2001) 13 *Child and Family Law Quarterly* 137; Richard Chisholm, "Children's Participation in Family Court Litigation" Paper presented at *International Society of Family Law 10th World Conference* (Brisbane, 9-13 Jul. 2000) and Marsha Kline Pruett and Kyle Pruett, "'Only God Decides': Young Children's Perceptions of Divorce and the Legal System" (1999) 38 *Journal of the American Academy of Child and Adolescent Psychiatry* 1544.

[v] Nineteen year old young man speaking of his experiences of family proceedings as a child, quoted in Jennifer McIntosh, "Four Young People Speak about Children's Involvement in Family Court Matters" (2009)15 *Journal of Family Studies* 98, at 101.

[vi] See Conor O' Mahony *et al.* "Child Care Proceedings in Non-Specialist Courts: Lessons from Ireland" (2016) 30 *International Journal of Law, Policy and the Family* 131.

[vii] Daly, *Children, Autonomy and the Courts.*

[viii] The UN Committee on the Rights of the Child emphasises the importance of the wishes of children in relation to the means by which they are heard. Committee on the Rights of the Child, *General Comment No. 12: The Right to be Heard* (1 July 2009) CRC/C/GC/12, para. 35.

[ix] See generally Daly, *Children, Autonomy and the Courts.*

[x] See Anne Smith, Nicola Taylor, Pauline Tapp, "Rethinking Children's Involvement in Decision-Making after Parental Separation" (2003) 10(2) *Childhood* 201.
[xi] Committee on the Rights of the Child, *General Comment No. 12*, para. 35.
[xii] See for example Fiona Raitt, "Hearing Children in Family Law Proceedings: Can Judges Make a Difference?" (2007) 19(2) *Child and Family Law Quarterly* 204 and Judith Cashmore, "Children's Participation in Family Law Matters" in Christine Hallett and Alan Prout (Eds.), *Hearing the Voices of Children: Social Policy for a New Century* (London: Routledge, 2003).
[xiii] Ursula Kilkelly, *Listening to Children about Justice*: *Report of the Council of Europe's Consultation with Children on Child-Friendly Justice* (Council of Europe, 2010) at 39.
[xiv] Seventeen year old girl with experience of family law proceedings, quoted in Douglas *et al*. at 85.
[xv] Eleven year old boy with experience of family law proceedings, quoted in Douglas *et al*., *ibid* at 57.
[xvi] Peter Parkinson, Judith Cashmore, and Judi Single, "Parents' and Children's Views on Talking to Judges in Parenting Disputes in Australia" (2007) 21(1) *International Journal of Law, Policy and the Family* 84.
[xvii] For example in New Zealand. See further Michelle Fernando, "Family Law Proceedings and the Child's Right to be Heard in Australia, the United Kingdom, New Zealand, and Canada" (2014) 51 *Family Court Review* 46 at 53 and below.
[xviii] Andy Bilson and Sue White, "Representing Children's Views and Best Interests in Court: An International Comparison" (2005) 14 *Child Abuse Review* 220 at 232.
[xix] See Morag, Rivkin and Sorek.
[xx] See for example John Caldwell, "Common Law Judges and Judicial Interviewing" (2011) 23 *Child and Family Law Quarterly* 41.
[xxi] Family Court of New Zealand, *Judges' Guidelines—Decisions with Children* (Ministry of Justice, 2007). Available at http://www.justice.govt.nz/family-justice/about-us/info-for-providers/info-for-lawyers/judges-guidelines-decisions-with-children (last accessed 6 Nov. 2014).
[xxii] *Brown v Argyll* [2006] NZFLR 705, para. 48.
[xxiii] Family Court of New Zealand, para. 6.
[xxiv] There has been a dramatic reduction in funding for children's involvement in family law proceedings in New Zealand however, which will undoubtedly adversely affect the frequency of the judicial meeting. See Daly, *Children, Autonomy and the Courts*.
[xxv] *Ibid*, paras. 9-11.
[xxvi] *Ibid*, para. 12.
[xxvii] *Re M. (A Minor) (Justices' Discretion)* [1993] 2 FLR 706; *B. v B. (Minors)* [1994] 2 FLR 489.
[xxviii] See further Brenda Hale, "Are We Nearly There Yet?" Paper presented at *Association of Lawyers for Children Annual Conference 2015*, Manchester (20 Nov. 2015).
[xxix] Family Justice Council, *Guidelines for Judges Meeting Children Who Are Subject to Family Proceedings* (Family Justice Council, 2010).
[xxx] Michael Karle and Sandra Gathmann, "The State of the Art of Child Hearings in Germany. Results of a Nationwide Representative Study in German Courts" (2016) 54 *Family Court Review* 167 at 172.
[xxxi] Jacqueline Clarke, "Do I Have a Voice? An Empirical Analysis of Children's Voices in Michigan Custody Litigation" (2013) 47(3) *Family Law Quarterly* 457.

[xxxii] Rachel Birnbaum and Nicholas Bala, "Judicial Interviews with Children in Custody and Access Cases: Comparing Experiences in Ontario and Ohio" (2010) 24 *International Journal of Law, Policy and the Family* 300.
[xxxiii] See Morag, Rivkin and Sorek at 15 and Tamar Morag and Yoa Sorek, "Children's Participation in Israeli Family Courts: An Account of an Ongoing Learning Process" in Benadetta Faedi-Duramy and Tali Gal, eds, *International Perspectives and Empirical Findings on Child Participation: From Social Exclusion to Child-Inclusive Policies* (Oxford University Press, 2015) at 33.
[xxxiv] See European Union Fundamental Rights Agency, *Child-Friendly Justice: Perspectives and Experiences of Children Involved in Judicial Proceedings as Victims, Witnesses or Parties in Nine EU Member States* (European Union Fundamental Rights Agency, 2017) at 28. Interactions with judges in open court, however, was described by many children in this report in more negative terms.
[xxxv] Karle and Gathmann at 179.
[xxxvi] See detailed consideration of this point in See Daly, *Children, Autonomy and the Courts*.
[xxxvii] Michelle Fernando, "Children's Direct Participation and the Views of Australian Judges" (2013) 92 *Family Matters* 41.
[xxxviii] This research included proceedings in which children were involved as victims and witnesses, an area which is beyond the scope of this article although it overlaps significantly with children in child care and family law proceedings as similar principles will apply regarding child-friendly proceedings.
[xxxix] Female, 15 years old, victim, domestic violence case, European Union Fundamental Rights Agency, *Child-Friendly Justice: Perspectives and Experiences of Children Involved in Judicial Proceedings as Victims, Witnesses or Parties in Nine EU Member States* (European Union Fundamental Rights Agency, 2017), at 23.
[xl] Male, 16 years old, victim, domestic violence case, *ibid*.
[xli] *Ibid* at 26 and Children's Parliament, *Children's Parliament: Children's Experiences of the Scottish Hearing System* (video recording, 2012). Available at: http://www.youtube.com/watch?v=LZPJs1D96UM&list=PLFl3iTfqvpeAS_lxRyWoizlzRdIUe5sXZ&index=1, (last accessed 9 Jun 2014) considered further in Daly, *Children, Autonomy and the Courts*.
[xlii] European Union Fundamental Rights Agency at 24.
[xliii] See the TALE project website at http://www.project-tale.org/ (last accessed 23 Mar. 2017).
[xliv] Scottish Children's Reporter Administration, *National Survey of Children and Families in the Children's Hearings System 2012/13* (Scottish Children's Reporter Administration, 2013), at 6.
[xlv] Joan Guardia *et al.*, "Child Court Hearings in Family Cases: Assessment Questionnaire of Child Needs During Pre-Trial Proceedings" (2011) 3 *European Journal of Psychology Applied to Legal Context* 47.
[xlvi] European Union Fundamental Rights Agency.
[xlvii] *Re K.P. (A Child)* [2014] EWCA 554.
[xlviii] The girl knew she would meet the judge at some point, but did not know it would be that day.
[xlix] *Re K.P. (A Child)* [2014] EWCA 554, para. 56.
[l] Joan Guardia *et al.*,

[li] CAFCASS, *Supporting Child Inclusivity in the Family Courts* (Feb. 2015). Available at https://www.cafcass.gov.uk/news/2015/february/kitys-column-supporting-child-inclusivity-in-the-family-courts.aspx. (last accessed 22 Apr. 2017).
[lii] See further Rachel Birnbaum and Nicholas Bala, "Judicial Interviews with Children in Custody and Access Cases: Comparing Experiences in Ontario and Ohio" at 312.
[liii] See for example Rachel Langdale and James Robottom, "The Participation and Involvement of Children in Family Proceedings" *Family Law Week* (5 Mar. 2012).
[liv] Aisling Parkes, "Implementation of Article 12 in Family Law Proceedings in Ireland and New Zealand: Lessons Learned and Messages for Going Forward" in Tali Gal and Benedetta Duramy, *International Perspectives and Empirical Findings on Child Participation* (New York: Oxford University Press, 2015).
[lv] Parkes *et al.*, "The Right of the Child to be Heard? Professional Experiences of Child Care Proceedings in the Irish District Court" (2015) 27(4) *Child and Family Law Quarterly* 423 at 434.
[lvi] O' Mahony *et al.* at 17.
[lvii] Aoife Daly, *The International Legal Right of Children to be Heard in Civil Law Proceedings Affecting them*.
[lviii] Findings of the Child Care Law Reporting Project indicate that guardians were appointed in 53% of cases observed, but regional variations ranged from 13% to 80%. Carol Coulter, *Second Interim Report: Child Care Law Reporting Project* (Oct. 2014), at 7, 10, and 61.
[lix] Fiona Gartland, "Care Leavers' Network call for national service for court-appointed guardians" *Irish Times* (Mon, Oct 10, 2016); Parkes *et al.*, at 441 and Aoife Daly, "Limited Guidance: The Provision of Guardian ad litem Services in Irish Family Law" (2010) 13(1) *Irish Journal of Family Law* 8.
[lx] Parkes *et al.* at 441 and Children's Rights Alliance, Making Rights Real for Children: A Children's Rights Audit of Irish Law (Dublin: Children's Rights Alliance, 2015), at 30.
[lxi] Child Law Audit, at 30.
[lxii] Child Law Audit, at 38.
[lxiii] Parkes *et al.* at 434.
[lxiv] *Ibid*.
[lxv] *Ibid* at 431.
[lxvi] *O'D v O'D* [2008] IEHC 468.
[lxvii] Parkes, "Implementation of Article 12 in Family Law Proceedings in Ireland and New Zealand: Lessons Learned and Messages for Going Forward".
[lxviii] O' Mahony *et al.* at 13.
[lxix] *Ibid* at 7.
[lxx] *Ibid* at 22.
[lxxi] *Ibid* at 7.
[lxxii] Parkes *et al.* at 430.
[lxxiii] O' Mahony *et al.* at 10.
[lxxiv] Law Society of Ireland, *Submission to the Department of Justice, Equality and Defence: Family Law – The Future* (Dublin: Law Society of Ireland, 2014) at 5; Geoffrey Shannon, Seventh Report of the Special Rapporteur on Child Protection: A Report Submitted to the Oireachtas (Dublin, 2014) at 98 and Parkes *et al.*
[lxxv] Coulter, 2014, at 27. See O' Mahony *et al.* at 13.
[lxxvi] Carol Coulter, *Final Report: Child Care Law Reporting Project* (2015) at 52. See O' Mahony *et al.* at 13.
[lxxvii] O' Mahony *et al.* at 13.

[lxxviii] *Ibid* at 23

[lxxix] Parkes *et al.* at 443-4.

[lxxx] Twenty one year old young lady speaking about child inclusion in family court proceedings quoted in Jennifer McIntosh, "Four Young People Speak about Children's Involvement in Family Court Matters" (2009) 15 *Journal of Family Studies* 98 at 102.