

Making Children's Evidence Better

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Making Children's Evidence Better

Drawing on practical examples and live family cases, how can you make it better for children giving evidence and hearing evidence, especially when they hold the key to the issues before the Court?

Making Children's Evidence Better

- Family Procedure Rules 2010
- Part 3A Vulnerable persons participation in proceedings and giving evidence
- Practice Direction 3AA
- *PS v BP [2018] EWHC 1987 (Fam)*
- Wide discretion in family cases
- Overriding Objection [FPR 2010]
 - Timetable
 - Issues to be investigated
 - Procedure

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- As a party
 - Child as a protected party
 - Capacity to conduct proceedings
 - Invitation to Official Solicitor
- As a witness
 - Protected Person
 - Requirement to consider participation directions

- Explaining the proceedings
- The role of the judge
- Meeting the Judge

Re KP (A Child)



- Controlling the evidence
- Controlling the experience
- Participation
- Directions
- Ground Rules
- Intermediaries



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- Participation Directions
 - Prevent a party or witness from seeing another party or witness
 - Allow a party or witness to participate in hearings and give evidence by video link
 - Provide for a party or witness to use a device to help communicate
 - Provide for a party or witness to participate in proceedings with the assistance of an intermediary
 - Provide for a party or witness to be questioned in court with the assistance of an intermediary
 - FPR 2010 PD 3AA

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- Deciding whether Children should give evidence
 - FPR 2010 PD3AA para 5.1 'relevant case law and guidance'
 - Re W (Children)(Abuse: Oral Evidence) [2010] UKSC 12
 - Re E (A Child)(Evidence) [2016] EWCA Civ 473
 - Family Justice Council Guidelines
 - Ground Rules Hearings – FPR 2010 PD3AA para 5.2-5.7
 - Advocate's Gateway

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Case One

- 2 sisters aged 12 and 9
- Allegations and retractions in respect of sexual abuse
- Police investigation / Care Proceedings
- Both children separately represented
- One wanted to give evidence - one didn't
- One gave evidence - one didn't
- One gave evidence again
- 3 Child witnesses – 2 gave evidence 1 didn't

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Case Two

- 9 year old girl / allegations of sexual abuse
- 5 years of private law proceedings
- Social Care and Police involvement
- ABE Interviews
- Findings of sexual abuse / Appeal
- 2 sets of ABE interviews
- Intermediary assessment / Ground Rules Hearing
- No live evidence

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Case Three

- NAI to young child / Care Proceedings
- 11 and 9 year old siblings joined as interveners as alleged possible perpetrators / separate OS representation for both
- ABE interview of older sibling
- ABE interviews of child witnesses
- Intermediary assessment / diagnosis of ASD (communication issues)
- Re W hearing in respect of all children giving evidence

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- Conclusions to draw / Steps to Take
 - Depends on the circumstances / your instruction
 - What are the issues?
 - Child's role to be considered at the earliest opportunity
 - What evidence is necessary?
 - What evidence might be forthcoming?
 - What are the other options to address those issues?
 - How to assess the impact of each option on the case and the child concerned?

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