

Children and Young People's Participation in Private Law Family Court Proceedings

A thesis submitted for the degree of
Doctor of Social Work School of Social
Sciences

Lauren Doyle
March 2025

Thesis Summary

In this thesis, I explore children and young people's experiences when their family come to court within private law family proceedings. A mixed methods approach was used to generate data, which involved an analysis of 50 Cafcass files held by the Children and Family Court Advisory Service (Cafcass) alongside a workshop with (21) children and young people with experience of family justice. Drawing on key concepts from the sociology of childhood and rights-based practice, I examine the opportunities afforded to children to take part in court and surrounding processes, examining how their views, wishes and feelings are heard. The study situates children as active participants who hold the ability and expertise to shape, experience and make sense of their situations. The study recognises that family court proceedings do not simply 'happen to' children or occur for each young person in the same way. I undertake this examination as a social-scientific practitioner, with a closeness to the research area through my social work practice within the field examined. I sought to use my experience of the research setting to garner new insights and ways of understanding the individual stories of children and young people. The study found that within the practice files there is evidence of theoretical and sociological understandings of children and childhood which are used to both uphold and curtail their views, wishes and feelings. Children's agency is framed by adults and there is a complex relationship within rights-based practice, particularly when balancing young people's participative and protection rights. Particular attention is given in this thesis to critically engaging with children's participation, including the context within which opportunities to participate are produced and a meaning applied. Throughout the period of study, work has been ongoing in this area of family justice; there is now greater accountability held for engaging children and young people meaningfully. Practice developments undertaken by Cafcass and the piloting of new approaches to private law family justice demonstrate the recognition that change and improvement is needed. Furthermore, it suggests that there is motivation to improve children's experiences. The thesis concludes with insights for practice and policy, with the intention of contributing to ongoing developments. It is intended that the outputs from this study contribute not only to the growing body of research in this area, but offer a way forward that is complementary to, and actively progresses, the reform that is taking place.

Acknowledgements

There are two main areas to which my thanks are bestowed. Firstly, to my supervisors Professor Sally Holland and Dr Jen Lyttleton-Smith. Undertaking a doctoral study alongside my social work practice has been an intimidating and at times overwhelming task. Their constant support, guidance and encouragement has been everything to me as I have kept this study on track. It has been a privilege to gain from their knowledge and work with them on this study. Thank you to Dr Tom Slater, who supervised me during the initial phase of my doctorate, this project is founded in his early guidance. A further expression of thanks to my friend Dr John Hogan, who was the first person who told me that a PhD was within my capability and has supported me ever since.

Above all, I would like to thank the children and young people who took part in the research activity and who I have worked with in my social work practice, to whom this study is indebted. Throughout my study, the encounters I have had with children and young people as their social worker has been ever present in my mind. This research endeavour began with the intention of appraising how children and young people experience social work interventions but has created the most powerful opportunity to examine my own practice. I believe I am a better social worker for it. Finally, I would like to recognise the contribution of Cafcass who understood the importance of this study and allowed access to their data.

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Glossary of Terms

CAFCASS	The Child and Family Court Advisory Support Service will be referred to as Cafcass throughout this study. The service was set up in 2001 under the provisions of the Criminal Justice and Court Services Act. In England, the organisation is a non-departmental public body, sponsored through the Ministry of Justice
CAFCASS CYMRU	Child and Family Court Advisory Support Service, Wales, devolved to the Welsh Government
FCA	Family Court Advisor (title given to social workers employed by Cafcass/Cafcass Cymru)
FJYPB	The Family Justice Board are a group of over 75 children and young people who either had direct experience of the family justice system or have an interest in children's rights and the family courts. The group are funded and coordinated by Cafcass.
Local Authority	The local authority is used to refer to the social services department of designated councils or boroughs who have statutory duties under the Children Act, 1989
Non-resident parent	A non-resident parent does not have sole or main day-to-day care of any relevant children but may spend time with their child either by way of agreement or court order.
Section 7 Report	Welfare Report under Section 7 of the Children Act (prepared by Cafcass/local authority under the Child Arrangements Programme)
Separated family	For the purpose of this study a separated family is defined as one parent with care, one non-resident parent and any biological or adopted children they have between them who are either under 16 or under 20 and in full-time non-tertiary education
UNCRC	United Nations Convention on the Rights of the Child. It was signed by the United Kingdom in 1990 and was ratified in 1991

Glossary of Legislation

Name of legislation	Relevant section
Children Act, 1989	Part I. Section 1: Welfare of the child Section 7: Welfare reports Part II. Section 8: Child arrangements orders and other orders with respect to children
Criminal Justice and Court Services Act, 2000	Chapter II. Children and Family Court Advisory and Support Service Section 11: Establishment of the Service. Section 12: Principal functions of the Service. Section 13: Other powers of the Service.
Children Act, 2004	Part III. Advisory and support services for family proceeding CAFCASS functions in Wales Section 35: Functions of the Assembly relating to family proceedings Section 36: Ancillary powers of the Assembly Section 37: Welsh family proceedings officers
Families and Children Act, 2014	Part II. Family justice Section 10: Family mediation information and assessment meetings Section 11: Welfare of the child: parental involvement Section 12: Child arrangements orders Section 13: Control of expert evidence, and of assessments, in children's proceedings
Family Procedure Rules	Practice Directions. 12B: Child Arrangements Programme 36Z: Pilot Scheme: Reform: Investigative approach
United Conventions on the Rights of the Child (1989)	Articles 1- 54 General Comment No.12 the Right of the Child to be Heard. Geneva: UN Committee on the Rights of the Child General Comment No.14 On the right of the child to have his or her best interests taken as a primary consideration: UN Committee on the Rights of the Child

Chapter One: Introduction

Private Law Family Court proceedings

Cases of straightforward relationship dysfunction, not involving abuse or a need for protection, should not need to come before a magistrate or judge for resolution. Indeed, because, for this group of cases, the issues concern matters of emotion and psychology, a court is most unlikely to be the best place to achieve any lasting resolution. The court, with its clunky legalistic approach will undoubtedly, in the end, produce a result which may then have to be imposed upon the parents, but I would suggest, for this substantial group of cases, the court process is not one that either adds value to the welfare of the child or is in any way beneficial for the parents. In some cases, it may simply provide a pitch and a referee for them to play out further rounds in their adult contest.

(Sir Andrew McFarlane, President of the Family Division, 2019)

This quotation from the President of the Family Division exemplifies that for children and families experiencing family problems the court is not a forum equipped to deal with the thoughts, feelings and emotions that arise out of family separation or change. Many families, however, see the Family Court as their only source of help. This study attempts to understand what the ‘clunky legalistic approach’ means for children and young people who are brought into this process, how are their rights affected and what can we do to ensure their involvement is child focused. Despite the warning, much more court time is spent responding to private law children’s cases, when parents/carers or family members bring cases to court to seek decisions regarding the upbringing of children, than public law proceedings, when the local authority initiates court proceedings to safeguard children at risk of abuse and neglect (Family Court Annual Report, 2024).

The Ministry of Justice collates the Family Court Statistics in England and Wales. In the most recent quarterly figures published, which measure from July to September 2024, there were 4,073 new public law cases, involving 6,562 children, and 13,103 new private law cases, involving 20,046 children. In July 2024, there were 10,708 public law cases travelling through the family justice system and 41,020 private law applications. Within the same period, it took an average of 41 weeks for private law cases to reach final order¹. The volume of private law family

¹ Family Court Statistics Quarterly; July to September 2024. Published 19 December 2024

cases, the number of children affected, and the length of time it takes for the court to help children and families who experience family justice is therefore substantial yet very little time and effort, until recently, has been spent examining their needs.

Concern is raised for the experiences of both adults and children who are involved in private law family proceedings, where significantly higher rates of domestic abuse, substance use, and parental mental ill health affect families in England and Wales when compared to the general population (Cusworth, et al., 2021a).

Furthermore, families from deprived areas of England and Wales are overrepresented (Cusworth, et al., 2020). For children and young people, it has been observed that notably few have a voice within proceedings (Hargreaves et al., 2024), that without appropriate information about proceedings children devise their own distressing interpretations of the family court (Butler, et al., 2003), and that a pro-contact culture can be particularly dangerous for child victims of domestic abuse (Hunter et al., 2020). It is because of these concerns that this study was completed, a key motivation being to better understand children's experiences and how their voices are represented.

Five years following the warning expressed by Sir Andrew McFarlane at the outset of this chapter, on the 2 December 2024, he published the first Family Court Annual Report, providing national performance data in both public law and private law cases, as well as identifying key issues within the family justice system and initiatives undertaken to improve the delivery of services. The report highlights the difficulties inherent in responding to a demanding level of family court cases, particularly recognising the impact on children and families when decision-making is lengthy, thus demonstrating that in the intervening period the troubles expressed in his 2019 address were not mitigated. Currently, actions are being taken to try to divert cases away from court, when it is appropriate to do so, and deliver an improved quality of court service to those who need it. The report mentions the introduction of the Pathfinder Courts pilot, which is an initiative in private law. The pilot is introduced briefly below, as it is a key change that was occurring during the timeframe of this study and has implications for how children and young people are involved. The traditional Child Arrangements model, which exists under the Child

Arrangements Programme², remains prominent in practice throughout England and Wales. The data examined in the research was from within this model. Yet this study is attentive to the change that is taking place and attempts to consider what the research findings mean for these developments.

Pathfinder Courts Pilot

The Pathfinder Courts pilot was, in part, a response to the report *Assessing Risk of Harm to Children and Parents in Private Law Children's Cases*, known as the 'Harm Panel Report', published in 2020 (Hunter et al., 2020). The report identified major problems with how the family courts were responding to domestic abuse and identified harm arising from family court orders. Further, it found that a large proportion of children have no direct involvement, their voices go unheard or are muted, particularly in circumstances where domestic abuse is raised. The pilot was introduced in March 2022, at Family Courts in North Wales and Dorset, seeking to improve information-sharing between agencies, allowing judges to review gathered information and request more documentation before a case gets to court. Another aim was to improve how children are listened to and their views considered when decisions are made about their futures, intending to take account of their views earlier in proceedings and, following court decisions, to say whether they are working. It also seeks to respond to the quantity of private law applications and reduce the length of time that they take to resolve. The pilot was extended to Cardiff and Birmingham in April and May 2024 and following this the Ministry of Justice plan to extend it to all courts in England and Wales (MoJ, 2024).

The Role of Cafcass/Cafcass Cymru

Cafcass was set up in 2001 under the provisions of the Criminal Justice and Court Services Act. In England, the organisation is a non-departmental public body, sponsored through the Ministry of Justice. In Wales, the organisation is devolved to the Welsh Government, but the court service and judicial training remain the responsibility of the Ministry of Justice. Cafcass is independent of the courts and

² The Child Arrangements Programme is designed to assist families reach safe and child-focused agreements for their child, where possible out of the court setting. If parents / families are unable to reach agreement, and a court application is made, the CAP encourages swift resolution of the dispute through the court (Practice Direction 12B).

local authority but work to the rules of the Family Court and legislation. In both England and Wales, they serve the same purpose: to work with children and families involved in family court proceedings, being responsible for advising the courts on what is considered to be in the best interests of individual children.

Social workers within Cafcass are referred to as family court advisors and guardians; the title depends on the area of legislation that is being applied under the Children Act 1989. For the purpose of this thesis, family court advisors (FCAs) will be referred to frequently, as this is the title given to Cafcass social workers operating within private law family proceedings. Family court advisors report under Section 7 of the Children Act, 1989. This area of legislation requires that:

A court considering any question with respect to a child under this Act may—

- (a) ask an officer of the Service or a Welsh family proceedings officer; or
- (b) ask a local authority to arrange for—
- (c) an officer of the authority; or
- (d) such other person (other than an officer of the Service or a Welsh family proceeding officer) as the authority considers appropriate,

to report to the court on such matters relating to the welfare of that child as are required to be dealt with in the report.

Children Act 1989, Section 7

The legislation therefore outlines that local authority social workers may also prepare these reports; this generally occurs when they are involved with a family and providing support. Alternatively, it is not unusual for a self-employed or independent social worker or psychologist to prepare reports. This study has focused on the work that Cafcass undertake when directed to complete a Section 7 report, exploring particularly what this means for children and young people.

The Motivation and Rationale for the Study

This research endeavour was motivated by my observations regarding evidence-based practice resources within my professional social work practice. I began working with Cafcass in 2017, which represented a transition in my practice: from working with children and families where the local authority had identified concerns

often leading to public law family proceedings, to circumstances where families were bringing their situations to the attention of the court and asking for decisions to be made. As I entered this field of practice, I encountered children and families who were not often written about in the practice literature that guided my social work education, and I was not able to identify research which was explicit about their experiences. There were many studies focused on domestic abuse and inter-parental conflict within divorce and separation, but less so on how children and young people navigate private law family court proceedings, their support needs, and best practice (two key exceptions are studies Cafcass has conducted and contributed to, were, the Private Law Consultation Document *How It Looks to Me* (2010) and *Your Shout Too*, a report conducted by the NSPCC and Cafcass (Timms & Thoburn, 2007)). An initial aim of the study, therefore, was to improve and progress the knowledge base and contribute to what was a small body of research on children's experiences.

As the study progressed, others were also evaluating the topic (most notably the work of the Nuffield Family Justice Observatory and others see; Symonds, Dermott et al., 2022. Though my research focus remained unchanged, this did allow the study to grow alongside the new focus on improving children and young people's experiences of family court proceedings. I was interested in what others were suggesting in way of improvement and whether they addressed one of the main objectives of this study, considering the opportunities and limitations to children and young people's participation. The research that has been developed over the past five years is timely and much needed, building an increased awareness of this sub group of children's experiences, attending to their particular needs. My research therefore offers a well-timed contribution, increasing the integrity of our understanding through qualitative sociological examination.

My Positionality

I moved several times between ideas when I commenced the professional doctorate, thinking about what and how to research. What rooted me on my path was my identity as a social worker with a desire to complete a study based on the issues which I had encountered in practice. Early entries from my research journal

document how I considered research ideas and hypothetical questions based on my life as a social worker. My comments demonstrated that I was never far from a study which appraised children and young people's involvement in social work interventions. The use of self and the implication of the researcher 'being me' was therefore present from the start.

Contradictory debates exist within methodological literature about the extent to which the relationship between researcher and the object of study help or hinder research activity and findings (see for example, Whitaker & Atkinson, 2019:63 who identify that those with a type of membership to the research field have to 'work hard to suspend taken for granted assumptions'). Qualitative researchers recognise that the production of knowledge and research activity is capable of being explored outside the science of reason and objectivity, being well used in social work to examine everyday practice (see White, 1997; Hall, 1997, Fook, 1996). Thus, I accepted that the emotion and subjectivity that my knowledge and experience would bring are science too and have much to contribute to social research. The reflexivity that was engaged in the research process is examined fully in Chapter Three; it is enough to say here, that a reflexive and critical approach to research involved a constant movement between my social work and research identity, which, although impossible to separate completely, required some distinction to look at a familiar topic through the research lens.

Thesis Structure

In this introduction, I have explained the context within which the study is situated, the motivation and objectives. Chapter Two explores the literature that informed the research, drawing on a range of published works, comprising of theories of childhood and making the relational link to child care policy. This section charts the changing discourse around children and childhood and how this has shaped social work practice. I then move on to examine children's experiences of divorce and separation as a life event, before turning to focus on what children and young people's participation means, exploring the legislative footing, theoretical concepts and policy, with particular attention given to how these are applied. The subsequent third chapter discusses the methodology and research design of this

study, where I explain the chosen research approach and the decision to employ mixed methods, describing each method thoroughly. I detail my research practice, explain the process of data production and explore the ethical challenges within this chapter, also further analysing my researcher positionality.

In the second half of the thesis, three data presentation and analysis chapters set out the research findings. Chapter Four begins by providing an overview of the descriptive patterns within the sample data, contextualising the practice files examined and outlining key findings from my research activity with children and young people. The subsequent two chapters continue to detail the findings of the research activity, revealing what was uncovered about children and young people's involvement in private family law proceedings. In Chapter Five, a practice exemplar that was typical of the data is used to help explain the commonalities and variances found, to explore the factors that influence children's involvement. The final data-led chapter examines how young people's rights are balanced within the context of family justice, revealing practitioner attitudes and practice approaches, and then, how the legal context was seen to influence participation. Throughout the chapters, interpretive discussion around the meaning of these findings is interwoven, analysing the implications for the study and research of children's participatory experiences of family justice throughout.

The study concludes with Chapter Seven, by detailing what has been learnt in response to the research questions. What this means for Cafcass practice and family justice is also summarised. Areas for future research are suggested, and consideration is given to how the findings of the study may be used to improve children's experiences and involvement.

Chapter Two: Literature Review

Introduction

This chapter explores the existing research and literature within which the study is grounded through a narrative appraisal of the research field. It provides a critical summary of the sociology of childhood, identifying key child care policy perspectives that shape our understanding of children's position in society today. The move toward recognising and safeguarding children's rights is then discussed, with reference to domestic and international legal frameworks, such as the Children Act (1989) and the United Nations Convention on the Rights of the Child (1989). A subsequent focus of the chapter contemplates previous and contemporary research into children's participation, examining the theories that drive practice in this area and the legislative principles that underlie children's involvement in private law family proceedings. Consideration is then given to the growing body of research within the field of private law practice and children's participation, evaluating the research field as it stands and highlighting the need for further research which responds to the needs of children and young people of separated parents who encounter family justice. As I draw the chapter to a close, I outline my central research questions. In undertaking this historical overview and examining our current conceptualisation of children's rights, I argue that whilst our ambition may be to position children as agential citizens, this is an idealised notion, confronted within the realm of the family court where persistent protectionist discourses continue to shape our attitudes to children. I suggest that until we interrogate our assumptions and address how historical perceptions of childhood interfere with current values, we are systematically prevented from actualising the agentic child within practice.

As my research is based upon a social constructionist understanding of 'the child', to conduct this literature review it was necessary that I was familiar with key theorists, discourses and perspectives that are critical to our understanding of children as a phenomenon. The constructions that underpin social work practice were important to my study, particularly how 'childhood' has been theorised throughout time. Examining this theoretical background enabled me to find theories

relevant to the study, requiring the use of electronic databases, as well as published books. To seek policy and empirical research, social science databases including ASSIA, SCOPUS and Google Scholar, in addition to government and public body websites, were used to access literature. This enabled me to identify reports published by public bodies and key organisations such as Cafcass, Cafcass Cymru, Nuffield Family Observatory and several UK institutions. The search strategy employed to gather current peer-reviewed/edited or published articles used key terms, such as 'children' 'young people' 'involvement' 'participation' 'experiences' 'private family law' 'custody' 'divorce' 'separation' 'family justice' 'courts' and 'contact'. Social work journals were a useful source of information. British and International journals were consulted as were law, psychology, education and child development journals. Receiving updates from networks such as the Cardiff University library, Cafcass library and newsletters from Community Care, NSPCC, and Family Law, provided means of purposeful and incidental identification of source material.

A wide range of literature was gathered throughout years of study, some of which reduced in relevance as other contemporary research became available. Tracking the significance of the literature was therefore necessary. The limited quantitative studies within the review were assessed using NICE guidelines (2012), though, most of the relevant literature was qualitative research. The appraisal strategy set out by Shaw and Holland (2014) was used as a checklist through which to organise empirical research studies:

- Is the study relevant to my research questions?
- Are the research methods, including data generation method(s), sample, ethical issues and analysis, clearly reported?
- Did the design fit with the research aims?
- Are the data rich and is this evidenced through direct data extracts?
- Are the conclusions supported by the data and its analysis?
- Is there evidence that analysis has looked for and accommodated exceptional cases, anomalies and complexities in the data?

(Shaw & Holland, 2014)

A systemic review of the literature was beyond the scope of the study. A broader narrative approach was undertaken, summarising and synthesising existing

literature within the subject area (Paré & Kitsiou, 2017) based on its relevance to my research focus. The review evolved to include recent studies and those responsive to the reform that is taking place in family justice, ensuring that it was progressive and informative to the research field.

A Summary of the Sociology of Childhood

The first section of this review provides a summary of the literature around the study of childhood, acknowledging how the concept is situated in time and place and is further influenced by discourses, practices and values (Lowe, 2012). As the concept of childhood has changed, so has the child care law and policy which regulate the role of the state in family life. The aim of this first section of writing is to equip the reader with a broad overview of the perspectives that shape our understanding of children's position in society. I begin by considering historical approaches that remain influential to the policy and practice discourse, discussing how key psychological theorists such as Freud and Piaget, shaped the construction of childhood alongside the early input of sociological theory. I move on to look at how these views shaped social policy at the time, particularly when thinking about children's positioning within the family. Two further sections discuss the new sociology of childhood that emerged in the 1990s and attention is given to what this changing construction of childhood meant for child care policy. This does not provide a full analysis of childhood studies and policy, though it introduces the social trends and theoretical ideas, to arrive at the perspective of children as rights holders within parental divorce and separation. The subsequent focus of the review then concentrates on the legislative principles and systems that underlie children's involvement in private law family proceedings. Each section will be introduced in turn.

The study of childhood has been theorised from a range of perspectives over the past two decades as attempts have been made to explore the child's social world and understand the journey to adulthood (Jenks 1992; Hendrick, 1992). Within the United Kingdom, children and young people hold rights as citizens but also protections in the law that are specific to their status as children. Those laws sometimes appear contradictory. State education and nursery provisions reflect

that we value the importance of educating children and protecting them from expectation to work. Our child care law and policies place legal responsibilities upon local authorities, courts and parents to safeguard and promote the safety and wellbeing of children and young people (Children Act, 1989). These rights and protections, however, are neither fixed nor exclusive. Within the four nations of the UK, there are discrepancies. Whilst physical discipline of children was banned in Scotland in 2020 (Children (Equal Protection from Assault) (Scotland) Act 2019) and Wales in 2022 (Abolition of Defence of Reasonable Punishment, (Wales) Act, 2020), it remains lawful in England (s58 of the Children Act 2004). Defining the age of criminal responsibility suggests that we believe that the youngest children lack the maturity to be responsible for their actions or to be punished for a crime, but the young age of criminal responsibility (aged ten in England and Wales) can be juxtaposed with several child protection laws extending to age 18 (Hendrick, 2015). This highlights that our understanding of children, their rights, responsibilities and child care law, remains a complex area of debate within the UK nations. Before I turn to current perspectives of childhood and child care law and policy, we next look at traditional views.

Historical Approaches to Childhood

Many historical periods have seen the activities of childhood, and the society of children experience significant change. Different perceptions of childhood have been shaped by religious, social, economic and political challenges (Hendrick, 1992). Ariès (1960) asserted that childhood was ‘discovered’ in the seventeenth century; a time when Locke’s educational philosophy characterised children as blank slates shaped by experience (1689), prior to which Ariès emphasised that there was no recognition that children held a separate nature to adults. The end of the Middle Ages presented a time of deep transformation as attitudes toward children changed. Cunningham (2003) posits that the crucial industrial changes occurring in the late nineteenth century, which saw the decline of child labour and the rise of state education, is significant to the reconstruction of childhood. More recently, the nature of childhood is argued to have been constructed and re-constructed as societies around the world have globalized; as countries have become richer, the complexity of childhood has transformed (Katz, 1997).

Contemporary studies of childhood continue to grapple with the diversity of childhood experiences. Issues of interest include the divergent experiences between the West and the non-Western world, to that of childhoods characterised by the new media age (Kehily, 2015). As Archard states 'a child is a young human being the facts of whose youth are interpreted differently across different societies and different historical periods' (2004:26). Consequently, like our understanding of disability, race and gender, childhood is shaped by culture and society, and this is reflected in how, as a collective, we behave toward and think about children. What constitutes childhood and how it is experienced is therefore an important variable of social analysis.

Psychological and Sociological Theories of Childhood

Prior to the 1980s, much of what was written about children was developed within the field of psychology, and whilst there has been a rise of sociological discourses, for decades this remained the dominant discourse through which children are studied (Maybin & Woodhead, 2003). Early studies of the natural sciences were occupied with theorising whether childhood was biologically and genetically defined or governed by environmental factors. Developmental psychologists debated the dependable nature of children and contemplated their innate predisposed ability to acquire knowledge and skills against their ability to learn behaviour (Kehily, 2015). Well known examples include Erik Erikson's stages of psychosocial development theory (1950), which relied upon a developmental progression through eight stages, without fully considering people's influence on their environment or context. Similarly, Jean Piaget (1932) failed to see childhood as a varied phenomenon, his theory was premised upon an 'age and stage' model of Western child development, reflecting a universal standard of childhood. Further, Sigmund Freud, (1917) asserted that children were rarely aware of the motives or reasons for their behaviour (Santrock, 2004). Whilst there was some thought given to the environment in which a child resided, much of what was thought about children, childhood and their development was studied within a vacuum, which gave little thought to the effect of the outer environment (Bauman, 1997). Overall, psychoanalytical, cognitive and behavioural theories provided important perspectives in the study of children that contributed greatly to understandings of

children and their experiences although often failed to account for the influence of culture or society.

Early sociological theorists who contributed to the discourse drew attention to how childhood was shaped by society yet continued to explore the concept as a process of social maturation towards adulthood, rather than recognising it as valuable, in its own right (Wyness, 2019). Prout (2005) argues that early childhood studies, with both sociological and anthropological input, failed to pay attention to the active participation and agency that children held in their social and collective life. Parsons' (1951) functionalist perspective of the family, for example, provides that the main task of childhood was to become socialised through adult forces. His social systems theory failed to centralise children and young people as actors within society. Through this lens, children were seen as ineffectual beings, as Hendrick (2005:19) asserts the 'unfinished or incomplete' adult or innocents, or as asserted by Bernstein (2011:4) 'sinless, absent of sexual feelings, and oblivious to worldly concerns'. Within these perspectives, children were seen to rely on adults to shape them into grown beings, through societal forces such as religion or education, and following a period of socialisation they became useful to society. This conceptualisation, however, neglects variation and intersectionality in childhood experiences. Faulkner (2011:6) observes, 'the unpalatable truth is that the value of a child's innocence depends on their capacity to be protected' when examining how this understanding of childhood is troubled by notions such as childhood deviance, poverty or disadvantage. We see therefore, how concepts of childhood can be exclusionary, through theories of development, laws and policies that overlook childhood as a process within which children actively participate.

These influences retain relevance for young people involved in family justice as we contend with aberrant childhood experiences or the child that does not conform to expectations. The agentic child, for example, troubles the notion that they should be protected from adult issues or do not have the maturity to participate as we centre decisions about their participation on immaturity and protection, rather than their needs or rights being fully understood (Eekelaar, 1986; Neale & Smart, 1998). Before moving to consider the changes that emerged within the construction of childhood and contemporary perspectives, I turn to look at the dominant

perspectives in child care policy at the time that developmentalism was central to our understanding and the perspectives that are found in the historical discourse, often seen to justify children's powerlessness within political and social structures (Mayall, 1998).

Childhood and the Private Family

Fox Harding (1982) is a key authority who has drawn together perspectives in child care policy within England and Wales. Her work identifies that the state's role in the family hinge, at least partly, on the underlying values within a society that are held about family, children, adults as parents, welfare and suffering (Fox Harding, 1997). She identifies four value perspectives based upon values and assumptions regarding children and families, attitudes to the powers of parents and the position of the state (Figure 1).

Figure 1 Value Perspectives in Child Care Policy

Laissez-faire	Family life is a private arena, children are reliant upon the family institution. Their vulnerability is best managed by their parents, who hold responsibility for making decisions for them. The family is a unit which controls and protects children. State intervention within family life is minimal, where needed it should be strong and authoritative to address unacceptable parenting.
State paternalism	Favour children's protection from poor parental care, assuming that the state is neutral, sensible and capable of adopting the best course of action. Reflecting a changing approach to policy as welfare provisions expanded. The perspective holds that children possess a right to protection, though maintains that they are vulnerable, with susceptibility to risk being emphasised.
Defence of the birth family	Identifies that the state has a role in family life to support and advance the well-being of families. Maintains that children are best raised by family and that if state intervention is needed it should come in the form of supportive welfare provisions. Identifies the need for state investment in welfare services.
Children's rights	More recent value perspective which represents changing attitudes to children as seen within the UN Convention of the Rights of the Children and in domestic law, the Children Act 1989. Finds that children have rights and adults have responsibilities to uphold them. Proponents can either strongly argue that power should be assigned to children or more moderately consider that rights are acquired over childhood.

Based on Fox Harding, 1997

Different orientations toward children and the family have held prevalence during different time periods and geographies, with laissez-faire perspectives operating within much of the nineteenth century, reflecting the prevalent political ideology of the time: that it was the responsibility of individuals and not of the state to sustain their own economy, providing little in terms of financial help, avoiding a reliance upon the state or hindering a person's desire for economic growth (Sheldon & Macdonald, 2009). This orientation is linked by Fox Harding to wider ideological views such as patriarchy, reinforcing that women and children were the property of, and reliant upon their husbands/fathers (Burman, 2008) with the privacy of the family facilitating the continuation of dominant power, fixing women solely as mothers and children as incomplete, immature and deficient. Firestone (1970), amongst others, critiqued not only the harmful effect of the nuclear family on women, but argued that the oppression caused by the privatised labour of the family was also experienced by children, both of whom were perceived as dependent. By contrast, both the perspectives of state paternalism and the defence of the birth family demonstrate a greater inclination to the rights that individual family members hold, particularly children who are seen to possess a right to protection, though each perspective adopts different views on the role that the state has in supporting the family.

Fox Harding acknowledges that within the perspectives there is often common ground, and no perspective operates in purity. She argues that they are helpful in characterising child care policy and, when used to devise state interventions, assist in balancing the compromise needed by children and families (Fox Harding, 1991). The typology has been drawn upon in this study to explore the ways in which different values are held around the role of the state, through the family court and when children are involved in private law family proceedings. I suggest that problems can present themselves when different perspectives are held about the best way to make decisions, particularly around family time 'contact' post separation. As seen within the address of the President of the Family Division at the opening of this thesis, a strand of 'laissez faire' can be discerned where children within these families are not deemed to need the help of the state unless there are safeguarding concerns. This positioning and the absence of targeted help

for these families indicates a tendency to under-respond to the needs of children and young people of separated families. Notwithstanding, some families actively request a more interventionist state and turn to the family court assuming it can help them with unresolved disputes about the care of their children.

Children's rights approaches have been on the ascendent in the last few decades. Under both Article 12 of the UNCRC (1989) and the Children Act (1989), children and young people have the right to be consulted about issues affecting their lives. However, when addressing specific child welfare problems, arguments may be made for over-riding their rights in favour of their best interests and protecting them from harm (Shaw, 2001), demonstrating that 'state paternalism' continues to be a dominant approach when it comes to children's safety. Furthermore, the legal presumption in favour of granting contact to a non-resident parent is seen as 'a heteronormative vision of families and family life' (MacDonald, 2017:2) and could be seen to align with a 'defence of the birth family' approach. This may conflict with other value perspectives. I argue that the perspectives within Fox Harding's typology retain influence as the notion of the child as an agential citizen remains aspirational due to the dominant values and assumptions represented within these perspectives. All of Fox Harding's identified approaches have relevance for this study, and the perspective of children's rights, is returned to in more detail in a subsequent section.

A 'New' Paradigm for the Sociology of Childhood

Since the 1990's the prevailing discourses of childhood became known as the 'new sociology of childhood', although some of the key texts are now thirty years old. Social understandings of childhood moved away from empiricist thinking toward a multidisciplinary appreciation for both the biological and social construction of childhood (James & James 2004). Jenks (1992) in his text 'Childhood' articulates that the concept is 'an ontology in its own right' (1992:9). This premise requires that we trouble the taken-for-granted assumptions that adults make in our interactions with children and consider the consequences that take place when we fail to uphold the divergence and difference in their social worlds. The shift is important for this study because the idea that childhood is socially constructed requires us to pay attention to how children and young people make sense of family separation

and the involvement of the family court. We are required to attend to the multiple adversities they face and the expertise they hold to shape and construct their own reality which we must understand, giving attention to how the power and structure of a society, in addition to social, historical and cultural contexts shape their experiences (Baader 2016).

International studies show that it is not possible to make universal assumptions about children due to wide variation of experiences which was pivotal to this revised conceptualisation of childhood (Lansdown, 2006). The emerging discourse from this period is influential to our current understanding, as sociological research and theory evolved to more clearly centre children and young people as active in contributing to their social worlds. This was accompanied by calls for improved data and information about children in government information and research documents to better understand children's experiences (Qvortrup, 1994). Esser et al., (2016) express that earlier conceptualisation of childhood had not only limited the rights of children, but they were systemically excluded from participation and active involvement; the call therefore was to increase children's opportunities to influence society. Critical to this movement was the attention that was given to the concept of children's agency and a changed understanding around the competence of children, even those young in age were recognised to be commentators and decision makers in their own lives (Sinclair, 2004).

There are several phrases linked to the counter-paradigm to developmentalism and family studies of childhood, which include: childhood being socially constructed, recognition and focus on children's agency, valuing children and young people's voices, experiences and/or participation (Tisdall & Punch, 2012). It has been successfully argued that the voice of the child matters (Jenks, 1992; James & Prout, 1997; James, Jenks & Prout, 1998) and this is particularly important in the context of family separation where children are found to be 'creative social and moral agents' with a distinct view on family issues (Smart et al., 2001). Whilst in principle this conceptualisation of childhood is agreed, the extent to which child care policy and law readily recognise children's rights is fraught with complexity. This is because whilst situating children economically and politically as part of society, actively participating in the construction and experience of

childhood (Prout, 2005), children are simultaneously subjects of care (Jans, 2004; Kjørholt, 2002).

Balancing these tensions is complex and power relations between children and adults remain. When children are involved in sharing their views within private law family proceedings, their opinions remain interpreted and represented through the lens of adults (MacDonald, 2017), particularly the family court advisor who has values and experiences predicated by their professional role and the 'legal and structural constraints' (James et al., 2004:194) within which they operate.

Therefore, how children's perspectives are constructed and represented are shaped by the adults they meet and how they individually interpret children and childhood. To conclude this section, I suggest that our thinking around children's position in society has changed, which should pave the way for their participative rights within family justice to be centred. I query whether, despite having important pieces of legislation that mirror this change, the child, as a social actor, is operationalised in practice.

Childhood and the Public Family

Understandings gained through the new paradigm were somewhat reflected in the United Nations Convention on the Rights of the Child (CRC 1989), which established children and young people as having the status of rights holders. Furthermore, at a time that childhood studies were gaining influence, domestic law within England and Wales began to reflect this appreciation of children's rights. This correlated with several high-profile inquiries into child abuse during the 1970s and 1980s, leading to a noticeable paternalistic state response, whilst also providing a receptive ground for not only the subsequent legislation of the twentieth century but an emerging children's rights-based approach (Archard, 2009). Consequently, the idea that the family was immune to state intervention was transformed.

The death of Maria Colwell in 1973, at the hands of her mother's partner, provides an exemplar of the incident-driven reform which called upon child care policy and child protection services to open the sphere of the family for greater inspection. This tragedy can be argued to have reinforced the perspective of state paternalism

and child protection denoted by Fox Harding, which favours state intervention in the family to protect children (Smith, 2005). The inquiry into Maria Colwell's death was important in shaping the future of child care policy. The Children Act 1975, the predecessor to the Children Act 1989, notably recognised the importance of speaking to children about their family lives, a lesson learnt from not only the death of Maria Colwell but also reflected in the inquiry into the death of Victoria Climbié, 2000.

The Children Act 1989, although not the earliest piece of legislation to represent changing attitudes toward children and child rearing (see, for example, Education Acts; 1944, 1981, Children and Young Persons Act; 1948, 1969, Local Authority Social Services Act 1970), was essential to improving the legislative footing of child welfare principles and realigned parents as holding responsibilities to children rather than exclusive rights (Fox Harding, 1991). The key principles provided new powers and responsibilities to local authorities to intervene in the lives of families to safeguard children, further defining the welfare principle. Consequently, parenting behaviour which led to child abuse was met with tougher interventions and state action (Parton, 2014). The third value perspective of Fox Harding, the defence of the birth family, established that within this changing society, the importance of the birth and biological family unit should not be lost; with the child best placed within their family. However, a significant step forward in the concept which held that the state, too, held responsibility for the upbringing of children (Archard, 2009).

Within child care case law, the developmental marker of age, and the protectionist and vulnerability narratives that early perspectives of childhood had driven, faced challenge. This was demonstrated most notably in the case of *Gillick v West Norfolk and Wisbech AHA* [1985] All ER 402, where a young person under the age of sixteen sought contraceptive advice and was found to be competent to consent to medical treatment despite her minor age or parental views. This judgement occurred at a time that the argument that children's age, limited experience and competence was contested. It was asserted that competence evolves in response to social situations, and it is a child's level of understanding that requires attention rather than chronological age (Pinkney, 2011). This case required a reappraisal of the capacity for children and young people to make decisions in their own lives,

particularly within the remit of family justice, occurring as there was demand for children and young people to not only be protected but heard, to have their voices taken seriously and to participate in decision making regarding their family (Laming, 2003).

This case was decided as a children's rights perspective emerged, which saw the child as having rights and a separate entity to the family (Fox Harding, 1997). The changing approaches to theorising childhood was seen in child care law and policy, influencing international and domestic legislation as well as the formation and re-formation of state support. Whilst current child care policy and law continues to grapple with the complexity of children's rights, those of their parents, and the role of the state in the family, we can see that the reformation of childhood that occurred within the last quarter-century has been instrumental to shaping current day perspectives. Though an attempt has been made to draw together a coherent narrative of the key historical developments over this first section, the academic literature, law and policy are fraught with tension and contradictions, reminding us that children's dependence and vulnerability remains entwined with the idea that they are competent and agentic. Throughout the thesis, I return to think about the values of children and childhood that are constructed within society, by social workers and the judiciary when upholding their rights within family justice.

Children and Young people's Participation in Private Law Proceedings

In accordance with the UN Convention on the Rights of the Child, listening to children and actualising the rights that they are afforded through legislation is a key issue for the contemporary politics of childhood, particularly too for those concerned with the welfare of children and young people. The aim of the second half of this chapter is to consider children's rights within family justice. I begin by considering divorce and separation within the family courts and then move to focus on their participative rights under international and domestic law. Theories of participation alongside the current research is examined, helping to expand our understanding of how children and young people navigate private law family court proceedings and their support needs. The chapter concludes by outlining the key

research questions that flow from this analysis of the literature. Through addressing this literature, I examine how the principles of participation have been operationalised in practice.

The theme of oppositional dichotomies runs through the next section of writing, as the literature which establishes participation as a fundamental right of young people who experience private law family proceedings is examined. Consideration is given to its legislative footing, theoretical concepts and policy, with particular attention given to how these are applied when attending to the views, wishes and feelings of children and young people within family justice. The essence of my argument remains that more careful attention is needed to the outdated discourses that continue to be present within practice, requiring us to make explicit the interaction between children's agency and vulnerability and primacy given to protection, if we are to be accountable to upholding children's participation in family justice

Parental Separation and the Family Court

Despite being identified in research as an adverse childhood experience (Rokach & Clayton, 2023), the purpose of this study is not to suggest that divorce and separation is always a harmful experience for young people, nor that all children who experience family justice struggle with the experience. The idea that parental separation is inevitably damaging has been challenged due to this perpetuation of children as passive victims, a concept that was discussed earlier when considering perspectives of childhood. Instead, the sociological perspective advanced by Smart, Neal and Wade (2001) is adopted, whose groundbreaking interviews with children and young people post parental separation, acknowledge that harm does emerge from these experiences for some, for others there are opportunities to exercise choice, develop independence and negotiate change on their own terms. Like the authors, I seek to better understand children's experiences arguing that approaching the topic in this way gives the necessary attention to their rights, needs and citizenship rather than perpetuating the discourse of 'harmism', the idea that divorce is inevitably damaging (Smart et al., 2001:41), which characterises much of the research in the field.

In the financial year ending 2023, it is estimated that there were 2.4 million separated families in Great Britain and 3.8 million children in those separated families. This data is based on the Separated Families' Statistics collated by the Department for Work and Pensions, using data from Child Maintenance Payments (DWP, 2024). The figures given, therefore, are cautionary as we know that many families choose not to use the services of this UK Government agency. However, it does give a picture of how prevalent parental separation and divorce is within society. Bryson et al., (2017), when conducting a consultation into the evidence and data needs around family separation in the UK, highlighted not only the substantial number of families and children who experience separation as a key reason for focused research efforts, but recognised the significance of separation as a life event and a need to understand the experiences of young people from within these families. Maintaining relationships with each parent upon separation is associated with better outcomes for children, yet there is not enough research that explores how children adjust after parental separation to enable us to identify the factors which mediate or moderate the event (Goisis et al., 2016). This is a key issue that the Family Court must often contend with when private law family proceedings take place.

The court become involved when a parent or carer makes an application under Section 8 of the Children Act. In 2014³ the terminology of 'contact' and 'residence' was changed and now courts are asked to make 'child arrangements orders', which determine where and with whom the child should live, and the time that they should spend with a non-resident parent. As set out in Chapter One, Cafcass have a role to play in these applications, being required to prepare an initial safeguarding letter in all applications and a more detailed and thorough family assessment, if the court determines a report under Section 7 of the Children Act 1989, is required (the specifics of this legislation are explained in the subsequent section). Determining family arrangements is a complex matter with decisions reached based upon the individual circumstances of children. Both international and domestic law require that in coming to these decisions the views of children

³ As amended by the Children and Families Act 2014

and young people are gathered and understood. This imperative is enshrined in both Article 12 of the United Nations Convention on the Rights of the Child and the Welfare Checklist Section 1 (3) of the Children Act 1989. I turn to each in the subsequent two sections to consider these pieces of legislation in more detail, examining what they mean for children in light of the tensions already uncovered in the chapter so far.

Provision, Participation and Protection

The UNCRC, passed by the UN Assembly in 1989, is the most ratified international convention and has over 54 articles that cover civil, economic, social and cultural rights for children. This, alongside the integration of the Human Rights Act, 1998, has played a role in the 'rights consciousness' (Fortin, 2009:3) present in the UK today. The articles under the CRC have been since classified broadly under three main arches: provision, participation and protection (referred to often as the Three P's). I discuss these briefly below, before moving on to consider several key issues with this framework for children's rights.

Provision: the types of rights that are considered under this branch include those that a child needs to reach their maximum potential (Aruldoss, 2020), incorporating the right to healthcare, education, identity and minimum standards of living. Of relevance for children and young people who experience family justice are the provisions that they are entitled to under Article 9, which outlines their rights in any form of separation within or from the family; it acknowledges, for example, that children's views should be taken into account when decisions are made.

Participation: this right is most often associated with the belief that young people should have a say in decision-making over their personal lives as well as practice, research and policy (Larkins, 2020). Article 12 is particularly important but is, however, dependent on the implementation of other rights. For example, within private law family proceedings a child requires the right to have a say about decisions that are being made for them but to uphold this right, they need access to information and freedom of expression which exist under other articles of the convention. The framework of rights therefore is interdependent.

Protection: how children are conceptualised, is particularly important for their rights of protection. The ‘harm principle’ is said to be at the heart of liberal democracy (Forrester, 2024) and emerged as the state and parents were seen to hold responsibilities to children, which exist alongside their individual rights. Article 19 is particularly relevant for family justice, placing an obligation on the state to protect children from all forms of harm. Alongside this, Article 20 details their rights when they cannot be cared for within the family and Article 3 requires public or private institutions to ensure the best interest of the child is given primary consideration.

Social work practice is grounded in this framework of children’s rights as both Social Care Wales and Social Work England, the respective regulators of the profession, align the ethics and values of the organisation within this practice orientation. Forrester (2024) outlines that human rights are fundamental to social work, but rights-based practice is not always straightforward, particularly when there are practical challenges, tensions and conflicts, which may lead us to uphold some rights whilst overrule others. Further, discussion exists about the ease with which these rights can be implemented both nationally and internationally, with both the UNCRC and the ideological positioning of children facing criticism for how well they live up to their ideals. Several key concerns include the generation of a universal concept of childhood which fails to uphold a culturally inclusive and flexible formulation of children’s rights (see Boyden & Myers, 1995), the disregard shown for the relevance of a child’s development, either how the exercise of rights might differ across the span of childhood, or how adults may ensure their implementation in a developmentally appropriate way (Todres & Kilkelly, 2024). Further, the proposal of an untroubled notion of agency fails to account for positions of power and the contested nature of the concept, which is assumed to be inherently good and desired by all children and young people (Tisdall & Prout 2012).

In further consideration of the last point, which holds relevance for upholding children’s participation rights, I set out earlier in the chapter how many have argued for the need to move away from a deterministic and universal developmental ‘ages and stages’ approach, to childhood (which leaves little room for young people being capable of making rational decisions), although it is necessary to

acknowledge that the diversity and development of children is relevant. Some theorists argue that agency is an ‘assemblage’ (Oswell, 2013:81) rather than a property held by children, it is a ‘heterogeneous, contextually shaped and negotiated phenomenon’ (Ackermann et al., 2016:246). The way young people exercise agency is relational, relative to other agencies whether that be structures of power such as the Family Court, people, such as their parents, or professionals, such as their family court advisor. When thinking about the rights of children within court proceedings, I suggest that this abstraction of childhood and children’s rights fails to account for the specific circumstances of young people, which can make it difficult when attempting to uphold rights in practice. A further area that can challenge rights-based practice is the interaction between the protectionist, welfarist, and autonomy approaches that are at play, which I discuss next.

The Welfare Checklist

Upholding children’s rights, and in particular providing opportunities for participation, cannot be separated from the welfare structure that is existent within the family courts and heavily enshrined within the Children Act 1989. The Act does not define what is meant by welfare. However, it does provide a checklist of factors which encompass the legal criteria that the court and Cafcass must regard within court proceedings (Figure 2).

Figure 2 The Welfare Checklist

<p>(a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding)</p> <p>(b) his physical, emotional and educational needs</p> <p>(c) the likely effect on him of any change in his circumstances</p> <p>(d) his age, sex, background and any characteristics of his which the court considers relevant</p> <p>(e) any harm which he has suffered or is at risk of suffering</p> <p>(f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs</p> <p>(g) the range of powers available to the court under this Act in the proceedings in question</p>	<p>Children Act 1989, Part I, Section 1 (3)</p>
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Although the incentive to gather children's perspectives is conducive with the welfare approach, it is said to organise children's rights in order of importance, with protection and provision featuring highly, and participation rights being relative to the child's competence, who is generally considered incompetent unless contrary proof is provided (Hanson, 2020). Featherstone et al., (2014) provide some reasoning for this, suggesting that a focus on protectionism, the dominance of procedural and risk averse practices were established following several child deaths (in particular, that of Victoria Climbié), the establishment of the Children Act 1989 and subsequent update (2004), as well as several other pieces of legislation. They maintain that society sees social work and family justice as focused on managing risk to children rather than upholding their rights, and there are severe consequences when this system falters. They critique the way that protectionism operates in society today, in particular the 'child-centric risk paradigm'. Instead, they argue for a relational approach to welfare and safeguarding which is child and family focused (Featherstone et al., 2014:16).

Enquiries into social work practice, most notably the *Munro Review of Child Protection* (Munro, 2011), similarly call for social work to move away from a culture of compliance and blame, focusing instead on developing relationships and providing improved social work services, returning to the values and ethics which underpin the profession. However, Webb (2006) suggests that, since late modernity, the social work focus has been on risk regulation within society, and it is this emphasis that enables protectionist approaches to take priority. This supposes that the deep-rooted nature of this activity may be hard to disrupt. How social workers promote children's rights, in a context where the priority is to attend to welfare and prioritise protection from harm, has therefore been regarded as a tension between protection and participation in social work (Shemmings, 2000). The issue for practice requires the balancing of rights within a context where protecting children weighs heavily.

Mantle and colleagues (2006) study into how children's wishes and feelings are established for welfare report enquiries depicts how these rights meet when a child's welfare is the over-riding focus. His study with Cafcass practitioners established that family court advisors faced practical challenges in empowering

children to be heard and participate within a context where the primacy of protection is so heavily embedded.

Children were regarded as ‘truth-tellers’ with whom rapport could, in most cases, be readily established. However, the drive to protect the child from the effects of parental conflict was ever present: efforts were made to ensure that fraught situations were not exacerbated. This marks a central dilemma for reporters who, while seeking the child’s wishes and feelings, strive to avoid making the child feel torn between their parents.

(Mantle et al., 2007:800)

The extract above delineates the approach taken to collect and present children’s views, wishes and feelings in court reports. In line with the first premise of the welfare checklist, it exemplifies how children and young people are considered reliable witnesses of their own experiences (Butler et al., 2002). It also details how practicing in a rights compliant way may not always be straightforward, particularly when there is a dominant assumption of protection, an orientation that this review of the literature has established can cast children as vulnerable, passive, restricting their power and agency. This is the contention which affects how we apply children’s rights in practice. It has been argued that many children may be excluded from participation because of professional judgements such as these or their personal circumstances (Lyttleton-Smith, et al., 2023), giving the appearance of participation whilst failing to attend to their needs, experiences and diverse contexts. I argue that a key problem faced by practitioners is that we are yet to find a way to balance the agentic child who has rights and needs within a context where we give primacy to protective and paternalistic approaches. I move now to deepen our attention to the participative rights of children, maintaining attention on our understanding of children and childhood, their rights, needs and citizenship and particularly how these are founded in several key models of participation.

Models of Participation

This section thus far has examined how participation is interdependent and related to other rights held by children and young people. It has been established that the position which they hold within society is distinguishable from adulthood, recognising that at times, and in certain contexts, young people rely on parents, adults or agencies to assist in the fulfilment of these rights. Furthermore,

participation is appreciated as not only a right, but a need that children and young people hold, particularly when seeking to influence decisions affecting their lives. Those working with children and young people within advocacy and citizenship work have found it necessary to establish models of practice to illustrate what rights-based practice means, attempting to help improve ways of working, the opportunities provided and counter some of the challenges discussed throughout this chapter. In this section, I discuss Hart's (1992) formative ladder of participation which has been critical to establishing participation from non-participation, and the work of Lundy (2007), whose model of 'space, voice, audience and influence' is often referred to within social work practice. I begin by recounting Lansdown's interpretation of Article 12, which reminds us of its core principle, as well as the responsibilities placed on adults to work in collaboration with children to ensure that they are respected and defended.

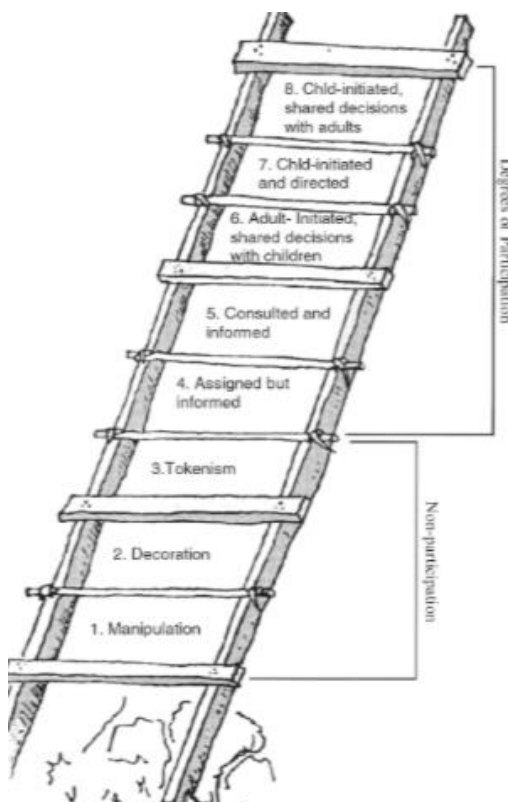
At the core is Article 12, which insists on the 'visibility' of children in their own right. Its implementation, alongside other civil rights, involves a profound and radical reconsideration of the status of children in most societies and the nature of adult/child relationships. It requires us to begin to listen to what children say and to take them seriously. It requires that we recognise the value of their own experiences, views and concerns. It also requires us to question the nature of adult responsibilities towards children.

(Lansdown, 2001:2)

Like, Lansdown, Hart (1992) was occupied with centralising participative rights in practice. His ladder of participation provides a traditional model that helps to emphasise how we value what children and young people say and contribute when consulted on issues. Hart's work serves 'as a beginning typology for thinking about children's participation'. (1992:9) and has been used to evaluate participatory processes, particularly distinguishing citizen-based notions of children's contributions. Using the imagery of a ladder (Figure 3), he suggests that, at times, the way in which we approach children's participation is not meaningful, using the lower three steps of a ladder to denote tokenistic or decorative forms of non-participation. The higher steps of the ladder are characterised by genuine approaches to participation, necessitating that when children consult on issues, they do so in a manner which has 'great integrity' (Hart, 1992:12). At the peak of

the ladder, children and adults share decision-making in partnership, with equal voice to adults (Bessel & Gal, 2009). Though his model acknowledges that different levels of participation may be appropriate dependent on circumstances, he is critical of those who do not honour child participation in a rights-focused way.

Figure 3 Hart's Ladder of Participation



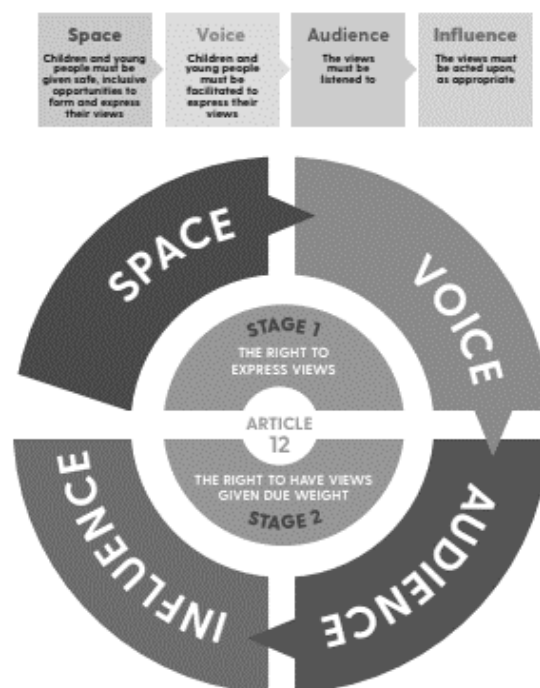
Source: Hart (1992)

Shier (2001) provides a further model of participation, which, not dissimilar to Hart, uses five levels to differentiate stages of participation, yet some (see Treseder, 1997) have been critical of this linear approach bringing attention to the contextual factors, including the role that adults and organisations play and the need to appreciate the complexities and barriers that may be engaged. The Lundy model of space, voice, audience and influence provides an alternative paradigm to consider children's participation. There are four key elements of the model, which I summarise briefly. The concepts of space and voice conceptualise the preliminary steps required to affect children and young people's rights of participation, suggesting that children should be given inclusive and safe spaces to share their

views (as advanced by others Lansdown, 2009; Shier 2001). This includes not only physical suitability but that the adults who children encounter in these spaces have the skill needed to facilitate engagement and provide the conditions of a trusting relationship (Lundy, 2007). It is further suggested that they must be supported to express their views, thus resonating with principles of social work, with it being recognised that in assessment work ‘respectful interactions have to be worked at and negotiated’ (Holland & Scourfield, 2004:26).

The further two concepts of influence and audience denote the steps needed to ensure participation activities are meaningful, requiring adults to attend to the practice of listening and taking account of what children say. This situates children as a direct source of authority on their own safety and well-being (Willow, 2003) and attends to the responsibility to recognise the full scope and purpose of children and young people’s right to participate in issues affecting their lives (see Munro 2001, Lundy, 2007, Bessell, 2011, Kennan et al., 2018). Children’s right to feedback and information is central to the model and an aspect that was made explicit by Lundy when revisiting the concept and practice of tokenism in collective child participation (Lundy, 2018).

Figure 4 The Lundy Model of Participation



Source: Lundy (2020)

Organisations and governments are giving increased attention to how they practice in a way that upholds all children's rights, which is important if we are to move away from focusing solely on the principles of protection and provision and appreciate the intertwined nature of children's rights. By way of example, the Irish Government has adopted the Lundy Model to support organisational change within the Child and Family Agency (TUSLA), which is the national agency responsible for child protection (Department of Children and Youth Affairs, 2015). Writing about Irish social work practice, Kennan and colleagues (2018) found illustrative examples of the model being adopted within a range of services, including child protection services, foster care services and residential centres, with the model being used to implement all elements of a child's right to participate in practice. They suggest that when pro-active attention is given to creating the conditions needed to seek the views of children it not only respects their rights but benefits service provision (Keenan, et al., 2018).

Participation in Private Family Law proceedings

As highlighted in the introduction, children involved in family justice due to private law applications far outweigh those involved in public law applications, though empirically we know much more about the latter. Research that investigates and evaluates children's involvement in private law family proceedings has been limited, however, the past five years has seen a turn in the attention given to this area of practice. This final section considers the current body of research, revealing what studies tell us about how young people participate and have their voice heard when their family comes to court. I take a thematic approach to discussing studies that have examined children's involvement in private law family proceedings, outlining two key pieces of research involving Cafcass before briefly mentioning several studies that have attempted to examine children's participation. I then turn to outline the findings from studies that have used Cafcass administrative data to explore young people's experiences and research focused on domestic abuse – where a degree of time and attention has been focused.

Cafcass research

Cafcass has conducted and contributed to two key studies, which are now fairly dated; in 2010, Cafcass published its Private Law Consultation document, *How it*

Looks to Me which built on the report of the HearNow service (2007), which sought feedback from children who had accessed Cafcass services via an online questionnaire. Both research projects sought the responses of children to make improvements to the service. The subsequent *How it Looks to Me* project held a consultation day involving 136 young people to ascertain their views. Through focus groups and questionnaires, respondents were asked for feedback on their experience of Cafcass and their involvement with the court, amongst other topics. Key findings from these studies include most respondents were unsatisfied or did not know if their wishes and feeling were made known to the court (Cafcass, 2010). The research identified key areas of practice which needed development to ensure that children were represented effectively and recommend that further research was necessary, to better understand children's experiences and involvement. Just over half of the respondents (n=141) in the earlier study felt that the Cafcass worker helped to make things better, over three quarters responded that they were able to have their say and just over half felt that this has made a difference to the outcome. A key message from the research was that children often require help after the court process has ended, suggesting that listening to children is not enough and support services are required (Timms & Thoburn, 2007).

Examining children's participation

Limited research has been conducted with children directly, with some researchers such as Fortin et al., (2012) seeking adult perspectives of separation in their childhoods, establishing that the quality of the child-parent relationship, the absence of conflict and being consulted over decisions around family time led to positive experiences post separation. Practitioner perspectives have more routinely been studied. Mantle and colleagues (2006) participatory study involving in-depth interviews with Cafcass practitioners established four major themes, age-based views of competence, tension between children's agency and parental influence, the need for protection and the necessity of intervention beyond assessment. Of the limited studies that have involved children in research, it is suggested that adults, through attempting to protect children, may cause greater confusion in failing to talk about separation (Butler et al., 2003), with the absence in communication being a similar finding within Tisdall and Morrison's study (2012)

into Scottish procedures, where age and protectionism were seen as reasons not to involve children.

The use of administrative data

Cafcass administrative data has been most notably researched by the Nuffield Family Justice Observatory who have published key research documents, aiming to build a profile of families in private law proceedings, their pathways and outcomes. Studies completed in both England (2021) and Wales (2020), indicated marked similarities including:

- the majority of private law cases are between two parents, and are mainly brought by fathers, usually the non-resident parent, and concern a single child who is most often aged between one and nine years old. The private law adult population are mainly in their late twenties and thirties.
- between 24% and 27% of private law applications between 2013/14 and 2019/20 were made by an applicant who had been involved in a previous application within the last three years.
- There is a clear link between deprivation and private law applications, which indicates that the economic vulnerability of private law parents requires closer policy attention.

(Cusworth, et al., 2020). (Cusworth, et al., (2021a)

Hargreaves et al., (2024) used administrative data to investigate the proportion of children who were likely to have participated in their family proceedings. They found that just over half (53.9%) of the 62,732 children who were involved in family law cases starting between 1 January and 31 December 2019 had a marker of participation, the most common marker in the data from both England and Wales was through being involved in a Cafcass/Cafcass Cymru reporting process. They acknowledge that there may be other ways that children engage in proceedings that are not recorded. Although this is unlikely to be the complete picture, it found that for the remaining number of children the data did not reveal any marker of participation, suggesting that there are limitations around how some children's views are considered within decision making. The importance of Cafcass welfare reports as a participatory opportunity is highlighted, however, these reports are not

directed in all situations and the researchers highlight ‘there is no universal mechanism for children to express their wishes and feelings, despite the hugely consequential nature of these cases’ (Hargreaves et al., 2024:32).

Domestic abuse research

Understandably, there has been a research focus on understanding children and young people’s views when the family court is making decisions about post separation relationships when domestic abuse is a risk factor. This is because about half of private law cases in England involve allegations of domestic abuse (Hunt & Macleod 2008; Harding & Newnham 2015; Cafcass/Women’s Aid 2017). Recent research by the Family Justice Data Partnership (a collaboration between Lancaster University and Swansea University) has also shown that domestic abuse, substance use, and parental mental ill health are all present at significantly higher rates for families involved in private law proceedings in England and Wales than in the general population (Cusworth et al., 2021). Concern has been expressed for how often court orders are made requiring children who have experienced abuse to spend time with abusive parents, research has identified a need to listen carefully to the views of this subgroup of children (see Morrison, 2016; Holt, 2018; Hunter et al., 2020). Findings have established that they have varied, mixed feelings and views about spending time with parents who have perpetrated abuse varying from negative views, including fear and dread to feeling ambivalent, missing or being happy to see them (Morrison, 2016; Trinder et al., 2013; Radford et al., 2011; Harne, 2011).

The Harm Panel report (mentioned in Chapter One) is a recent study which has led to change in the family justice system, with both Cafcass and the Family Division responding to the findings. Key findings relating to children’s participation include, that limited time is spent by practitioners with children, there is an absence of follow up following decisions, that limited resources can inhibit the extent to which children are involved in proceedings, and that time and skill is needed to properly understand and represent children’s views, which is rarely afforded and operates in a pro-contact culture (Hunter et al., 2020).

Conclusion

This chapter has discussed a wide range of influences on our current conceptualisation of children and the position they hold in society. Contradictions and contentions in practice have been revealed, arising through our historical positioning and understanding of childhood, with some retaining influence. It is appreciated that upholding children's rights within private law family proceedings is not always straightforward and there are tensions between the three arches of children's rights and the welfare principles that operate in family justice. It is evidenced that children and young people's participation in court processes is required within both international and domestic legislation, yet there is a limited evidence base, on which to be confident that meaningful participation is afforded. We know that many children do not have the opportunity to be heard and for those that do, our understanding of their experiences is limited to studies that use quantitative variables or dated studies that have not interrogated the concept of participation. It is argued that there remains an absence of understanding of children' and young people's experiences, which is a focus of this research.

Research Questions

Drawing on the literature reviewed in this chapter, the central research question underpinning this study is:

How do children and young people participate in Private Law Family Court Proceedings?

I devised three questions to facilitate a deeper exploration of the research topic:

- How do children and young people take part in private law family proceedings?
- To what degree does involvement with Cafcass allow for meaningful participation?
- What are the strengths and barriers to participation?

The methodology adopted to attend to these central research questions is outlined in the following chapter and returned to over subsequent chapters as the findings are discussed.

Chapter Three: Methodology

Introduction

This chapter presents the research methodology which was adopted to undertake this study into children and young people's participation in private law family proceedings. Careful attention was given to the best way to research the topic to provide new qualitative insights and add to the body of research that exists within the field. I, therefore, determined that a mixed methods approach, which involved analysis of Cafcass files alongside a workshop with children and young people with experience of family justice was needed. To begin the chapter, I discuss the research design, outlining the methodological approach grounded in the qualitative tradition with the aim of examining the research questions with depth, before moving on to consider the two phases of research. After explaining the process of data collection, I clarify why I sought to triangulate the data, holding relevance to the studies underlying constructionist approach as well as research aims. I outline my approach to data analysis, providing a reflexive account of a practitioner researcher, reflecting on my positionality before concluding the chapter through discussing the critical issues that arose during the research process, considering the ethical challenges, my reflections and the limitations of the research.

Research Design

The Ontological and Epistemological Foundation

The necessary starting point to begin an examination of this study's methodological approach is to clarify the theoretical perspectives which have influenced the research design. Kuhn, 1970 (cited in Maxwell, 2009) uses the term 'paradigm' to denote the set of philosophical assumptions that researchers hold about the nature of the world (ontology) and how we can know and understand it (epistemology). A paradigm central to the research methodology is the belief that divorce, parental separation and family court proceedings do not simply happen to children or occur for each young person in the same way. It is assumed that the reality for each child and young person is a social product of the individual, their interactions and institutions (Flick, 2018) and that their ideas, beliefs and identities provide the filter through which they understand the world (Parsons, 2018). The study therefore

situates children as active participants, who hold the ability and expertise to shape, experience and make sense of their situations.

Rooted in a constructionist philosophy, I adopted an interpretivist epistemology to generate knowledge based on the concern with, and interest in, how children and young people come to understand, account for, take action and manage the experience of family law proceedings (Miles & Huberman, 1994), attempting to understand the world from the point of view of social action or social actor (Bryman, 2016). The focus was not to define an objective truth about what it is for children and young people to be involved in private family law proceedings, or explain human behaviour, as is likened with a positivist approach to research. Instead, I attempted to 'give voice' (Greene, 1994:541) and generate 'thick description' (Geertz, 1973:14) about how young people negotiate their experiences. Throughout the research activity I held the premise that individuals attach meaning to events and experiences (their involvement with family justice) and through a study of the meaning I attempted to build understanding.

Research which attempts to understand the social world of children and young people, involving them in research design and regarding them as important participants is relatively recent (Einarsdóttir, 2007). As discussed in Chapter Two, early studies of childhood, centred on evaluating variables from psychological or biological studies from the social position of the adult. Though these studies were helpful in developing the consciousness that childhood required attention, intervention and was a life stage worthy of study (Prout, 2005), the passivity of children and young people in the research process was stark. This research project is influenced by our developed understanding of childhood, where investigative attempts to understand the views and perspectives of children and young people, reflect that they are seen as worthy of investigation in their own right (James & Prout, 1990; Qvortrup, 1994; Christensen & James, 2000). It is further guided by the children's rights movement which emphasises the need to take seriously the rights of children to express their beliefs (Freeman, 1998).

The Research Methods

Developing a multi-method and mainly qualitative study was key to creating a research environment where young people could participate and share their views in a meaningful way. The research was designed to enable a holistic exploration of the unique social position of children, appreciating that their reality would vary dependent upon the actor, their personal history, the period of time and culture within which they reside. Qvortrup (2015) reminds us that forms of measurement which count divorce rates for adults displaces children and renders them an invisible group in statistics, despite divorce being an experience affecting children as much as adults. This study attempts to redress the deficit, through generating knowledge which is premised upon children as actively engaged in the events of their own lives, adopting a research approach which respects and values their contribution; seeking to extend beyond what is reported about their experiences by adults.

The study design encompassed two phases of research to explore the research questions, beginning with a small-scale review of children's Cafcass files, taking the form of secondary analysis of case file data, which produced qualitative themes and descriptive quantitative variables, in the form of recorded incidences. The analysis of both data types enabled me to contextualise children's experiences of private law family proceedings and identify patterns and assumptions (the different forms of data generated and analysed is set out for the reader later in this chapter). Quantitative data were used descriptively, to act as contextual framing for the qualitative data generated. To support data gathering, I prepared a data extraction tool (see appendix 1), which enabled me to apply a framework to the records I was analysing; this tool was generated based upon my tacit knowledge of the setting and the research questions. The findings of the case file review were then arranged into key themes, influenced by the participation models discussed in the previous chapter and used for further exploration in the second phase of research.

Phase One

Using social work records to examine and appraise interventions with children and families is a well-practiced approach adopted within research. The file review relied upon the information found within the Cafcass electronic case management

system. The system replicates the electronic social care recording in assessment, planning and reviewing for children that is seen within children's social services introduced between 2000 and 2005 by the Department of Health and (then) Department for Education and skills (Pithouse et al., 2012). When negotiating the electronic files, it was acknowledged that case recording is expected to serve multiple purposes and several different audiences (Lillis, 2017) and that the dynamic, open and participatory recording required within social care is often overlooked within such systems (Shepherd & Hoyle, 2022). That said, I found that there were elements of the case recording system designed to encourage child focused recording, which was organised in such a way that practitioners were prompted to set out their plan of child engagement.

The data set

Access to data began through first seeking university ethical approval and then seeking organisational approval through Cafcass (see appendix 3). I sought access to case file data and approval to approach the Family Justice Young People's Board (Young People's Board) to invite them to take part in my research. I received ethical approval from the Cardiff University School of Social Sciences on 6 May 2020, and my research proposal was then put before the Cafcass Research Advisory committee. On 7 September 2020, I received a Letter of Agreement to progress my study.

An original data set was provided by the organisation based upon my submission of an inclusion and exclusion criteria, resulting in a sample pool of over 4,000 files. As a solo researcher the first task of the study was to identify a workable sample which could be read and analysed within the remit of the study. A sample was selected, which concentrated on three Cafcass service areas covering rural, urban and industrial geographies of England, ensuring the sample attended to the general population. To maintain anonymity of the children and families, Cafcass practitioners, family courts and geographical areas are not named. The sample was made up of children's files, which had closed in the nine months prior to the Coronavirus-19 health pandemic (July 2019 – March 2020), recognising that practice changes had arisen because of the pandemic, the effects of which were beyond the scope of this study. The files were of children aged between six and

17, all of whom had met with a family court advisor during the preparation of a Section 7 report (younger children's files were excluded as it was acknowledged that working directly with this age group necessitate approaches that require separate and deliberate attention within research methods). Another sample criterion was that all files had a final court order saved on file. This allowed me to map not only the mode by which a child or young person was engaged but aimed to facilitate correlation with the final decisions that were made by the family court and children's views, wishes and feelings.

On application of the sampling criteria the data set was brought down to a more manageable sample of 1,414 files, I then assigned individual research numbers to each file and used a randomised generator to pick the files for review. Prior to this point the organisation and selection of the data set had been purposeful, in that the sample had been generated based on the assumption that the files selected would yield rich information (Patton, 2002). When identifying the final small-scale sample for analysis, I decided to use a randomised sampling technique. Shaw & Holland (2014) suggest that within social work research we are often purposively choosing the people, settings or texts that we are researching and as such there is little logic in attempting random sampling. However, I decided to adopt this approach as a further strategy to manage my familiarity with the research field and to avoid any potential bias in the selection of the final sample. It is acknowledged that purposeful sampling is used for good reason in qualitative study, to select relevant data to gain in-depth understanding and that random sampling is often avoided when the sample size is small (Staller, 2021)). My justification in adopting this approach was to ensure that rich, meaningful data was collected whilst limiting the potential for bias that had the potential to arise out of my identity and familiarity.

Despite initially proposing to review 60-150 files, it became apparent that this was unachievable given the depth of analysis required and the amount of data generated through a single file. I therefore paused and reviewed data collection after 20 files and progressed to review a total of 50 which was the maximum number manageable within the confines of a doctoral study. Throughout the reviewing process I tracked the files by gender, ethnicity and age to ensure representation of a range of demographics. The Ministry of Justice (MoJ), Cafcass

and HM Courts & Tribunals Service (HMCTS) all hold data on the young people who are involved in private law family court proceedings, however, no source provides a complete picture of their demographics. Statistics captured by the Ministry of Justice reflect that higher numbers of children under age nine are involved in private law applications but there is a growing trend of evidence since 2016, of increasing numbers of applications being made for older children (Cusworth, et al., 2021). The chosen age range and implications for future research are discussed in the final chapter of the study.

Types of data

Files included various sources of information including the child's plan, which are filled out by the allocated family court advisor; recordings of assessment meetings; documentary data, including documents completed by the children when meeting practitioners or letters that were sent to them by Cafcass; the court report; practitioners' reflections and hypothesis; records of court hearings; and management direction or oversight recorded on the file. I detail four of the main sources of data below:

The child's plan

The *Good Practice in Recording and Access to Records Guidance* published by Research in Practice (2022) denotes that to enable children and young people involved in social care interventions to access their records, they often must negotiate a complex and interrelated web of information; that may be both difficult to access and understand. There were many times that I reflected, whilst undertaking data collection, that without the practice-based knowledge, which comes with being a researcher in practice, many of the finite details and themes that are held on the Cafcass case records may have been missed, given the way in which records are kept. The starting place for me in making sense of the child about whom I was reading was the child's plan.

There are four distinct electronic pages to the child's plan, the first of which is an initial section for hypothesising and formulating. Here, several questions were asked through prompts, such as, *What is happening for the child? How will you ensure the child's voice is heard in the case? What direct tools will be used?* The

second page is an update section which invites the practitioner to record any changes that had occurred. The third is a management section which provided a space for a manager to assess recording practices. The final page is a section completed prior to the file closing to Cafcass, further prompts are recorded here including, *What did the children want in respect of the outcome of the case? What did you recommend in respect of the outcome of the case? Did the court agree with your recommendations? What arrangements have been made to ensure the child will be informed of the outcome?*

Recording the child's views, wishes and feelings

At the time I was reviewing the files, there were various sections used by practitioners to record their assessment meeting with a child; Cafcass have since introduced a specific child engagement section of the file, enabling easier analysis. I therefore searched for a separate recording of the child's meeting on the file to explore how they had been consulted and their views, wishes and feelings explored. For some, there was no such recording and nowhere to identify what a young person's engagement with Cafcass had looked like, aside from some reference to their views within the court report. When clear and distinct recordings were present, I could sometimes extract information about the explanation given to a child about who Cafcass is, the role of the family court advisor and what the assessment meeting would entail, this helped to get a sense of how relationships were established. That is not to say that this practice did not happen if not recorded, but it made the task of capturing what engagement looked like more difficult.

Children's views, wishes and feelings were detailed in both narrative and documentary form, although the quality of recording varied across the sample. The review of children's files allowed me to see children's pictures and completed worksheets, as well as other forms of documentary data. Many documents were completed by hand and scanned onto the file; others were generated using electronic software. Letter writing was a popular activity, with children being supported to either write to their parents or to the judge, and many setting out their views on the issues before the court and what they wanted to happen. The richest

of these documents were in the child's own hand, patterned by typographical and grammatic errors and their individual expressions.

The court report

Within every file that I reviewed there had been a report prepared by Cafcass; this formed the basis of one of the inclusion criteria. The reports responded to the specific issues the court was deciding, guided by the welfare checklist, discussed in Chapter Two. The first task of the checklist is to 'consider the ascertainable wishes and feelings of the child concerned (considered in light of the child's age and understanding)'. An important facet of data collection and analysis was to examine how children's views, wishes and feelings were expressed and incorporated into these formal documents. Within the data extraction form I asked questions such as: Were the child's words used within the report?; Was documentary evidence provided of their views?; and Do the Cafcass recommendations align with their expressed wishes?.

Communication with children and young people

This form of data related to an examination of the correspondence between the practitioner and child during the time that Cafcass was working with them. I was interested to explore how many points of contact they had with Cafcass, whether there was opening, introductory or follow up communication and the forms in which this took place. I was further concerned with whether young people were kept up to date during the family proceedings, acknowledging that the data from the Ministry of Justice suggest that, for many children, their proceedings can run for up to ten months. I attempted to understand if the outcome of family court proceedings was shared with young people, and how practitioners established whether they had a role in this. On a few occasions there were follow up, calls, letters or emails, however, in most there was no communication following the assessment meeting.

Phase Two

Children's voices are the primary interest of this study, given our current paucity of knowledge surrounding their views and experiences. Therefore, generating data with them was a core focus of the research activities, whilst other data acted to complement and extend the capacity of analysis and practice recommendations. I

considered several means of researching with children when devising the research methods. Early thoughts included devising a co-produced survey to receive feedback from children and young people, similar to the method adopted by Timms and Thoburn (2007) when surveying the views of children and young people involved in private law family court proceedings. During my time working with Cafcass, I became aware of the Family Justice Young People's Board (commonly referred to as the FJYPB) who are a group of over 75 children and young people aged between seven and 25, living across England and Wales with experience of the family justice system and an interest in children's rights and the family courts. The Young People's Board, who are funded and run by Cafcass, take part in consultations with organisations and participate in research. I was struck particularly by their focus on improving family justice for other children and it appeared therefore necessary to ensure that their voices were captured within the study.

A benefit of researching with members of the Young People's Board was that they were not involved in active family court proceedings, which I hoped would reduce the distress or confusion experienced when talking about the topic. The study was focused on discussing the collective views of young people involved with Cafcass and family justice rather than the individual experiences of participants. Activities were designed to relieve the emotional pressure they may have felt to share their own experiences, yet it was anticipated that they would personally connect with the topic. The group was coordinated by members of staff within Cafcass, which ensured that participants had access to follow up support from trusted practitioners after the research activity (further explained later in this chapter). It was recognised that the participants were a specific sub-sample of young people, with a motivation to become involved in a board and thus unlikely to be considered representative of all children and young people involved in family justice, yet this limitation was not considered sufficient to exclude their involvement.

Recruitment of participants

A workshop with members of the Young People's Board took place in April 2023. Earlier that year, I posted a message to the group via an app that they use, about my research activity. I did not have access to the app or group myself, but a

message I drafted was posted by the group coordinator. I informed them that I would attend their next Board Meeting where I would hold what I envisioned would be a focus group, and at the event they could choose if they wanted to participate. I then attended the meeting and undertook a research activity with members who decided to take part. There was no expectation for children and young people to participate and I had no contact with the participants in advance, this was driven by an attempt to ensure that they joined freely. I was mindful that participants who initially agreed to take part in the research but then did not attend the session had indicated their wish to decline the project. My approach to recruiting participants and negotiating ethical concerns recognised that these processes were relational and enduring within the research activity. I ensured that there was a dialogue around participation where information was shared based on mutual respect and shared power between myself and the participants (Prout & Tisdall, 2006).

All participants and their parents/carers were given my phone number and email address by way of information sheet, which included a QR code, which linked to an online Microsoft Teams Information sheet and consent form. Young people over the age of 16 provided their own consent, younger children consented themselves, however, parents'/carers' consent was also sought. I was assisted by the group coordinator to ensure all necessary permissions were received. I collated basic characteristic data from the participants, such as age, gender and ethnicity, which is detailed in Chapter Four, although when writing up their responses within the findings chapters decided not to detail this information. This was to ensure that the anonymity of the participants was maintained. The vignettes, drawings, quotes and pieces of work they completed were therefore anonymised during the research process. However, members of the group were identifiable to each other.

The research activities

When designing the research activities, I gave thought to creative methodological techniques used with children, particularly where visual data had been used to generate understanding. I considered Mannay's (2010) approach to using photos with children which demonstrated relational ways of working and creative methods to build understanding. I also gave attention to Clark's (2003) mosaic approach, which used a variety of research methods to accommodate different children's

learning styles. Until the day of the research activity, I was not sure how many participants would express a desire to take part, I therefore planned for the eventuality that I was left with a small group of children who would make up one focus group, or that all attendees at the Board Meeting may want to participate, in which case I would need several groups who could collaborate independently. On the day, I had 21 young people who wished to take part. The research activity, therefore, was most likened to a research workshop.

Within the research activity itself, I was focused on ensuring the environment featured 'participation, engagement, empowerment, mutual learning, capacity building, and fulfilment of both research and action agendas' (Shamrova & Cummings 2017: 401). As was discussed earlier, when considering the relational nature of children's agency and participation, I was aware the relationships established between the young people and myself was an important condition for the research exercise. I therefore spent much of the morning before my research activity at the Board Meeting, I joined the participants for a morning break and conversed about everyday topics as well as explaining my purpose of being at the meeting and interest in research. I aimed to ensure that tenets of social justice, non-hierarchical relationships and reciprocal learning between participants and researchers were present (Fals Borda, 2001). Although I created the environment for their activity, the participants were encouraged to use the space in their own way. I conveyed the importance of reciprocal learning to the participants, by informing them that I was researching and consulting with them as they had an area of expertise that I did not.

Following the activity, I reflected on the workshop within my research journal, which was later shared with my supervisors, the extract below captures how the exercise left me feeling:

It was a busy session I spent time walking around the three groups and encouraging conversation, not that there was much need to as the participants had lots of thoughts and were eager to have what they said recorded. I left with so much in terms of scribbled notes and lengthy paragraphs. I probably wasn't prepared for how genuinely interested the young people would be about my research, why I am doing it, what a PhD is, why I am doing it in Cardiff when I live in London and when they will see me again to hear the

outcomes. I had a participant ask if they could help in some way, as they would like to get research experience.

Notes from research journal

Research activity one

Following the data gathered in phase one of the research, I began identifying key themes around what the data told me about children and young people's experiences of being involved with Cafcass and family justice. Prior to the workshop, I drew together a sample of composite scenarios, demonstrating what a child's journey through Cafcass could look like. Four avatar characters were used on three posters each demonstrating key themes, patterns or variances that had been observed within the data sample (discussed in Chapter Four). The focus of the first research activity was for the children and young people to work in groups to consider the posters. The participants formed their own groups based on where they had been sitting during the earlier session. Together they discussed the information and experiences of each character, and research prompts were provided as thinking points. Participants were given coloured pieces of paper, pens and sticky notes as research tools; however, group functioning was left to the participants to decide and organise.

One group worked collectively, with some of the oldest members of the research group working alongside the youngest to describe and sort their responses. Although some research methods texts suggest that large age discrepancies should be avoided, as it may create an imbalance for the group dynamic (Hennessy & Heary, 2005), this was not true for these participants based upon my observations; participants were collaborative and supportive of each other. Another group worked on individual responses, sharing ideas at times but mostly considering the research activity independently. The third group combined the other group behaviours; several of the members worked together on problematising the poster and thinking about the young person's experience. Two members stood close to the poster which was hung on the wall and engaged me in conversation about what was going on for the character and the problems they felt that this presented more generally for children involved in family justice.

Table 1 **Research Prompts for the Young People's Board**

Avatar	Prompts
Logan	What did you think when you read about Logan? Why is it important that a young person shares what they think and feel in their own words, letters or drawings? What do you think being involved in court proceedings was like for this young person?
Karina	What stood out for you about Karina's experiences? At what age should children be told the court is involved? This is the second time the family court has been involved in Karina's life, how might she be feeling?
Wren/Jamal	What did you think when you read about Jamal and Wren? Wren is aged 10 and Jamal is aged 15, would their ages have affected their experiences? Do children need to be told what a court order is?

An advantage of this research activity was that the issues presented by the posters held the participants' attention, who seemed to resonate with aspects of the characters' experience. After time had been spent considering the posters, each group was asked to share with the wider workshop, their characters' experience and what they had considered important. The sharing of the posters involved interesting and insightful thought sharing, and further discussion around children and young people's experiences. Documentary evidence in the form of sticky notes, and written sheets of paper were used by participants to write down their thoughts, particularly detailing their comments and opinions regarding children's experiences. These were available to me, to assist with data collection and analysis.

Research activity two

The second activity was a brainstorming exercise where participants used a sticky note activity to provide a piece of advice that they would give to their friend, on learning that their family were going through private law proceedings. They were also invited to provide a piece of advice for an adult within family justice who may

meet their friend. The way in which the participants completed this exercise was left to the participants to decide, which ended up being an individual exercise. The responses were collated by participants sticking their note to the whiteboard, some wanted to speak to me or other participants about what they had wrote, others chose not to. Some did not respond to this activity, whilst others wanted to discuss their responses with me as I facilitated the activity.

The role of the researcher

My role in the research activity was likened to the role of moderator within focus groups. Although there was a larger number of participants in the research activity than is generally associated with this method of research, I applied principles that derive from focus group research methods to guide the activity. Many of the characteristics of 'focused interviewing', attributed to Merton and Kendall (1946), considered to be an early influence in the focus group approach, were present in the research activity. The participants all had the common experience of encountering family justice, which was important to the research activity in which, as the moderator guiding the topic, I was aiming to gather data based on their subjective experiences (Hennessy & Heary, 2005). I found, that during the activities, the support and encouragement which the participants received from each other, within their smaller groups, appeared more valuable than any input from me. This is likened with a reason that focus groups are generally considered suitable for children and young people, as they can help to redress the power imbalance between researcher/participant or adult/child (Shaw et al., 2011).

Although this research is not fully participatory in design (Shaw & Holland, 2014), within the research activity and the approach adopted, I attempted to provide the conditions for meaningful participation, recognising that this requires researchers to give those who take part a broader role than simply being research participants (McLaughlin, 2020). The Young People's Board were represented at the Research Advisory Committee where my proposal was first considered, having input into the approval of the research. Further, I was aware that they were working with others to make child-focused changes to family justice and there was a fit therefore between their aims and values and that of this study. On the day of the workshop, I was responsive to the needs of the group and how they sought to engage with the

research process, some chose to speak to me on a one-to-one basis rather than within the group work activity and participants had the opportunity to give feedback on the research activity as I remained present for the several hours after the activity. There were also opportunities provided for follow-up or further research activity, however, this was not pursued. Initial feedback has been provided to the group on the research, via the group coordinator and it is hoped that arrangements can be made to discuss the findings at their next Board meeting. Further, I have made the workshop posters and findings summary available to them to use as they wish in their 14th annual Voice of the Child Conference in July 2025. I have, established a longer-term research partnership with one of the participants who is intending to take part in the dissemination of the findings.

The Integration of Research Methods

The approach I adopted appreciates how multiple methods can be used to provide a thorough examination of the research topic (see Denzin, 2009; Merriam & Tisdell, 2016; Thurmond, 2001). It is advocated that examining social work issues in this way facilitates the measurement of not only outcomes but the processes and the setting which surrounds the research area (Pawson & Tilly, 1997). However, what is meant by and achieved through the integration of multiple research methods is often ambiguous in practice (Bryman, 2006). Debates exist around the combination of methods (Sherman & Reid, 1994), it is cautioned that the purpose of combining different research methods must be clear (Teater et al., 2016) and used if only one approach will not allow you to adequately answer the research questions (Bryman, 2016). Though this study gathered quantitative variables, they were not statistically examined and were used to build a context of the research field. I would not describe the research, therefore, as 'mixed method', as this is often perceived to denote the combining of epistemological perspectives (D'Cruz & Jones, 2014). I did attempt to interrogate the subject through using two different qualitative methods, this approach is best typified as a 'triangulation' of data collection (Flick, 2019).

Triangulation is favoured for the added depth and rigour that the method can offer to the comprehensive study of a research area (see Walker, 2009; Gorard &

Taylor, 2004). Denzin (1978) proposes triangulation as a technique of combining multiple research methods and measures, identifying several approaches. This includes data triangulation, investigator triangulation, theory triangulation, and methodological triangulation, the approach being dependent upon the research strategy. My research involved data triangulation as two different sources were used to explore children and young people's experiences. The rationale for integrating methods within this study was to provide findings and achieve a level of analysis greater than that which was possible if a single method was adopted. My core focus was ensuring that the first-hand perspectives of children and young people were gathered, their participation was a way of ensuring that, where possible and within the confines of the study, the emphasis was placed on their point of view. I sought to add depth of understanding through contextualising the research field with the sociological review of children's files. The files allowed several themes and patterns to be quantified and qualitatively gathered, though, this data alone was not capable of answering the research questions posed. It was inputted by practitioners, shaped by their adult lens, and then mine, and with only indirect access to the viewpoints of children and young people. Direct access to young people's views was then provided by the workshop.

Data Analysis

Having now discussed the research design and methods, I move on to explain how data analysis took place for each method used in the study. The file review took place over 2022/2023, after an initial 20 files had been reviewed, I paused to consider the themes emerging, before proceeding to review a further 30 files. The data elicited was transferred into an electronic research datasheet which had been constructed in Microsoft Excel. Demographic data, such as age of participants, and length and number of proceedings, was entered in its existing format. The data sheet captured both qualitative and quantitative information, with there being space to copy and paste text from the file. There was an area for me to record my own reflections and a sheet for additional data to be stored (for example, though I could not copy court documents, I used this space to record court directions that were relevant to child involvement). Simple data analysis, using Excel's built-in

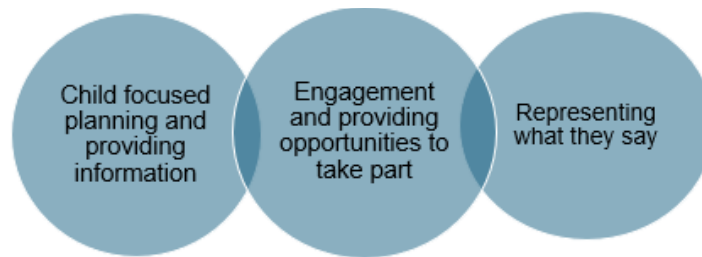
functions, was used to generate graphs and tables and analyse the quantitative variables.

To allow analysis of the qualitative information gathered through the audit of children and young people's files, I prepared an electronic data sheet, which merged the case file audit information into an easy-to-read format to enable coding. The data continued to be separated by research number, so that I could cross reference with the quantitative data and could go back to check information on the file, if I chose to expand my analysis. Being a visual learner, I spent time investigating themes on flipchart paper, as well as using electronic and hand highlighting, this allowed a deep familiarity to be built between the data and myself. Braun and Clarke's (2006) six stage framework for thematic analysis was used as a guide, the phases included familiarisation of data, generation of codes, combining codes into themes, reviewing themes, determining the significance and reporting of findings. The framework allowed me to be flexible and reflexive in my response to the data, whilst also using guidance, which I found both reassuring and helpful.

Using thematic maps I identified recurrent themes, patterns of interest and outliers, with a printed copy of my research questions to hand, so that the data were problematised regarding the issues I was concentrated on. I found this a particularly useful tool, to ensure that I did not become distracted by issues irrelevant to the research. Furthermore, I ensured that I remained connected to the research, rather than remaining in my practitioner role. I further developed a coding framework that was built around the participation models and literature I had read, which helped as a frame to analyse the data (see appendix 4). After spending a considerable period interrogating and re-interrogating both sets of data, I organised the data into three main themes, exploring how children and young people take part, thus responding to the first and second research questions:

1. How do children and young people take part in private law family proceedings?
2. To what degree does involvement with Cafcass allow for meaningful participation?

Figure 5 Thematic Map (research questions one and two)



A separate thematic map was used to explore the third research question:

3. What are the strengths and barriers to participation?

When analysing the data that responded to this third question, themes related to children's rights and the context of the family court arose, from both the Young People's Board participants and the files. The data were difficult to sort, as strengths and barriers were interwoven and complicated. There were also the practical challenges to child involvement such as time, resource and demand, which we can see is a problem for those in family justice, given the current upward trend in private law family proceedings. Spencer et al., (2003) describes conceptual mapping as a process of analysis, Braun and Clark (2006) similarly describe it as a cyclical process. In the research activity this resulted in an accumulation of messy thematic maps with overlapping features. I frequently moved between stages and ideas, and it was some time before this developed into a complete account. Outliers and deviances within the data were actively sought out and used to clarify and re-interpret the themes (Silverman, 2005). The identification of critical and deviant cases (Shaw & Gould, 2001) helped to draw comparisons and interlink themes or data, with comparisons developing a deeper understanding of children's participation and the factors that interrupt it. However, there were also data that despite being interesting, did not line up with the aims and objectives of this study and it was necessary to leave this data aside, so as not to stray from the focus of the study.

Reflexive Practitioner Research

I return in this section to consider my familiarity with the research area, explaining what reflexive practitioner research looked like in this study. Prior to outlining that there is no agreed objective definition of what reflexivity looks like, Whitaker and Atkinson (2019) exemplify what is implied when we think about reflexivity in research when they say:

Reflexivity runs through the research endeavour. Its recognition enjoins: considering the bases of theoretical assumptions; being open to revision in the light of observations; examining methodological assumptions; being conscious of the disciplinary lenses that inform current thinking. Reflexivity is not just “reflection” at a personal level, although it implies reflective practice: reflection about the self of the researcher - biases, preferences, biography, and practice – is the basis for sound and ethical research, but it is not the whole story of reflexivity.

(Whitaker and Atkinson, 2019:2)

The writing rejects the checklist or summary type approach to reflexivity, which is described within many social work methods texts, emphasising that reflexivity is inherent to the research process. It extends from researcher positionality and perspective, through to the way in which research is designed, the methods undertaken and analysis. They propose that there are five distinct and interrelated aspects of reflexivity that are engaged in the research process: epistemic, disciplinary, methodological, textual and positional reflexivity (for an explanation of these concepts see Whitaker & Atkinson, 2019). Their text reimagines Bourdieu's (1977) approach to reflexive sociology and theory of habitus, who assigns that where a person is situated in life, their agency and power, their experiences and background, structure the research activity. Like Bourdieu they recognise that our awareness must not end at ‘textual’ reflexivity, which is not dissimilar to the idea of confessional research writing in ethnography (McKeganey & Cunningham-Burley, 1987) but requires us to pay attention to how professional constructions, reactive methods and the researcher as, social actor, influence research.

Applying these ideas to my research, reflexivity required me to undergo a radically honest examination of how I, as researcher, defined the methodology and constructed the object under study. It was within supervisory discussions that I was led to better understand my existing knowledge and presuppositions, within my

research journal that I engaged with a critical appraisal of my thoughts and actions, and within reflective writing that occurred alongside data gathering, that I uncovered, made explicit, and constantly examined my experience. This way of understanding reflexivity situates research as a social practice, accentuating the responsibility of the researcher to recognise and be transparent about the way in which their way of seeing the world, their intellectual discipline and methodological assumptions shape the research activity.

Exploring everyday practice through research is a common feature of social science and questioning the intricate details of social work tasks and interactions has captured the attention of many social work researchers (see Pithouse, 1987; Scourfield, 1995; Ruch 2010). Similarly, I was drawn to use my experience of the research setting to garner new insights and ways of understanding the individual stories of children and young people who are involved in private law family law proceedings. One's familiarity is cited by many to be a potential problem for research activity, Whitaker and Atkinson presuppose that the orientation of the researcher within a field can lead to disciplines examining particular problems in set ways. Asserting that, not only does a shared epistemic position affect research behaviour and thus the object of study and arising results, so too do methodological traditions and research agendas within disciplines (Whitaker & Atkinson, 2019). Therefore, rather than problems, these are seen as the realities of social research. To counter them, it is proposed that social scientists give as much attention to the intertwined knowing and doing within which research activity exists (Letherby, 2003). White (1997) in her multi-method ethnography of child care social work provides an example of how problematising or defamiliarising oneself from routine forms of thought can offer new research insights. Her research activity exemplifies the critical control that is engaged when reflexively researching, signifying that reflexivity is a reciprocal relationship between the researcher and the object, steeped in introspection and accountability which takes place alongside research, rather than a discrete reflection or afterthought.

Many critical moments shaped my research. As I negotiated the complex relationship between the agency of children, the rights of family and state intervention in a chameleon like manner, I began to define what I felt was worthy

and necessary of study. Had I not assumed the interpretive paradigm that I and the object of study were interrelated, the need for constant self-monitoring between these positions would have been paralysing. The expression coined by Woolgar (1988:20), 'representation and object are not distinct, they are intimately interconnected', embodies the fluidity which underpins the constructionist philosophy that there is no fixed reality separate to how we as researchers operate in the social world. He calls for radical transparency, providing a continuum spanning from constitutive reflexivity; the view that the researcher is part of the reality constructed and cannot be separated with benign introspection; which is essentially reflective thought that provides the story of how research was done (Woolgar, 1988). His radical perspective questions whether we can ever measure the social world and usefully separate reflexivity from reflection.

I position children's realities as a social reality separate from me. However, the reflexivity, which is embedded in the study, realises the relational nature in which knowledge is situated and generated, assuming that the research activity and my involvement therein has constituted this reality. My undergraduate and postgraduate studies of social science alongside professional practice provided a solid basis for introspection and engagement in critical self-awareness of not only the personal but the wider political, intellectual and societal space that I occupy. However, the framing of research, my identity and the relationship that exists between me and the research activity required me to reveal, make explicit and work with aspects of my identity and positionality in a reflexive, rather than reflective, dimension. Feminist perspectives, such as Kelly (1978), Stanley and Wise (1983), paved the way for the sincerity within which the self in research is recognised and the traditional separateness of research activity is departed. Kelly advocated for personal testimony within the research process, arguing that it is fraught with 'mess, confusion and complexity' (Kelly et al., 1994:46). She was arguing that in traditional social science research, which was typically informed and performed by men, the researcher's presence within the activity was missing and not fully understood.

It was the untidiness of disciplinary identity, as depicted by Kelly, that required reflexive work within my research activity, particularly when researching through

the value lens that I hold in terms of the sociology of childhood and the positionality of children within society (see Fox Harding, 1997). I sway between a children's rights perspective, which rests on the notion that children are autonomous individuals, who have separate views, wishes and feelings, which should be heard both independently and in a way that it is authentic to them, rather than through the gaze of the adults or professionals in their lives. However, I also recognise and hold a statutory responsibility to uphold the welfare of children and provide protection which can lend itself to a paternalistic outlook. I have been immersed in the operating principle of welfare within social work practice and the family courts for over ten years now, and it takes concentrated attention to look at this context in a different way. The dual responsibility of safeguarding children whilst giving voice to their views, wishes and feelings within the complex arena of family justice are two concepts which do not always sit in harmony, it is the dichotomy that exists in trying to negotiate both tasks that effectively shaped my research.

There was a need for me to re-visit the notion of giving voice to children, acknowledging not only the way in which my research faced limitations in fully liberating their experiences, but the subjective way in which I defined exactly what giving voice to children may look like. To support data gathering I prepared a data extraction tool, which enabled me to apply a framework to the records I was auditing, this tool was generated based upon my tacit knowledge of the research setting. The questions it asked and the data it gathered made plain the ideas and notions which I held, whilst providing a means to ensure that the unelucidated prejudices I held did not dominate the research findings (Finlay, 2003). I remained, however, the prism through which the information was read, analysed and contrasted with dominant theories that underpin sociological thinking.

Critical Issues

As I prepare to draw this chapter to a close, I reflect upon several critical issues that were encountered throughout research, including the use of children's files without their consent, the absence of anonymity that the Young People's Board participants had from each other and their sensitivities as a group of participants. I touch briefly on the writing up period of the study, and how this required me to take

time away from professional practice so that I could further centre myself in a research environment, countering some of the challenges explored in the previous section.

Consent of Children within the Case File Sample

The explicit consent of each child within the sample was not sought. This was a decision that was supported by both the university ethics committee and the Cafcass Research Advisory Committee. The initial data set that I was given consisted of over 4,000 files, and whilst this was reduced upon applying my sampling criteria, it would have required contacting over 1,000 children for a final sample size of 50. This was practically unmanageable and instead the consent of Cafcass was sought⁴. I recognised that the children and families whose personal information is stored by Cafcass had not provided their information with the understanding that it would be used in my study. However, I believed that given the stressful nature of family court proceedings and the sensitivity involved in these cases it would be problematic to establish individual consent. Several key challenges that I could foresee were that many of the children involved in the case file audit may not be of an age to consent to the research; contacting their parents would necessitate individual contact details being provided to me; given that I was accessing cases closed to Cafcass there was a risk that my contact would be unwelcome, as families try to move forward after enduring a difficult court process.

Methodologically, if a significant proportion of people did not provide their consent, then it would cause issues for the representative nature of the sample that could be studied. This would have consequences for the ability to evaluate and achieve best evidence around what works that differ to the practitioner perspectives and quantitative studies already available in the field. There was also a further potential problem of tracing people which would pose data protection problems and the additional research tasks required would make the research untenable within the

⁴ Cafcass has a standard privacy notice that is brought to the attention of those accessing the service and is set out on the Cafcass website under the title 'how we use your information'. This details how personal information may be used for research about family court proceedings, confirms that research is published in non-identifiable ways and that they can choose not to have their information involved in research. None of the parents whose children's files I included had chosen to opt out of their information being available for research purposes.

realm of doctorate study. The issues and problems above have been examined by Hayes and Devaney (2004) who maintain that case files provide a valuable source of social work research, so far as measures are taken including that service users understand the full scope with which their information may be used (including for purposes of research) and data protection issues are addressed in the design and conduct of studies. This guidance was utilised during this study as I attempted to ensure that the methods and reporting presented the minimal risk of identification or recognisability.

General Data Protection Regulation (GDPR) considerations

Article 5 of the GDPR sets out seven key data protection principles, two of these contain special provisions for research-related processing, which says that using data for research purposes can be in the public interest if appropriate safeguards are in place. Protective measures were implemented during the research activity to ensure that the identities of the families were protected, including the data extracted from files was confidential, anonymised and any characteristics which made the case traceable were altered. Though imperfect, I considered that it was in the public interest for children and young people who are involved in private family law proceedings to be studied to ensure that they receive the appropriate services. The research approach was compliant with GDPR on the basis that there were conditions in place to prevent the possibility of identification in any publication.

Anonymity of the Young People's Board participants

To make sure that participants from the Young People's Board who took part in the research were informed of the aims and objectives of the study, an information sheet was distributed to the participants and their parents/carers. Separate parental and young person consent forms were also completed, which included information on how participants could withdraw their comments and contributions from the study. I outlined earlier in this chapter how the confidentiality and traceability of research participants was maintained with no reference being made to names or identifiable characteristics when writing up the findings. However, the nature of the research activity precluded me from being able to guarantee the

participants' individual confidentiality. It was essential therefore that ground rules were implemented and follow up support provided.

Ground Rules: my research activity took place on a day that the group were gathered for their Board Meeting. I was present throughout the morning, having the chance to be part of the welcome and introduction session to the meeting, where the group prepared their own confidentiality and ground rules for the day during an opening activity facilitated by the group coordinator, setting out what participants needed from each other throughout the day. I was able to adopt and modify this with the group at the outset of the research activity. When setting the co-produced group rules, I explained the limits to confidentiality; a) that anything the group shares will be known to each other and will be discussed within the research study b) that in line with child protection procedures any worries that a child raises or that I held, during or following the workshop, would be shared to keep them safe.

Follow-Up: the participant group was purposefully identified as a group of children and young people who were experienced in contributing to research. There were resources already in place that they could access for support either before or following the research activity. These were sufficient to ensure that the participants emotional wellbeing was managed, both in the context of sharing research responses and any after-effects of the research activity. A key source of support was the existing relationship participants had with the coordinator, who acted as a link between the group members and me. The coordinator was responsible for checking in with the group following the Board Meeting and could signpost to any required services.

Reflections on the Writing Up Process

Writing about her experiences of researching within the qualitative paradigm, Fook asserts:

The positivist assumption that you cannot trust your own judgment since it is by definition subjective, and therefore not objective and therefore not research, proved difficult to unseat.

(Fook, 2001:124)

The necessity to trust in your own skill and ability as a researcher resonates with my doctorate journey, and it was during the writing up stage of the thesis that I felt most affected by self-doubt. The awareness that Foucault (1980) brings to one's own position and the syntax of representation through language was particularly present (Bright et al., 2023), requiring me to be attentive to my positioning whilst not being overwhelmed by its presence. To ensure that I gave the time, attention and focus to the research activity, I removed myself from the workplace for three months taking a period of unpaid leave. In my research, I position reflexivity not as a way of justifying or responding to methodological concerns, but a way of being which is embedded within research practice. This break from practice, therefore, was not to improve the reliability of the study from a methodological standpoint, but rather to ensure that I could become more immersed within the final stages of the study.

Conclusion

This chapter provides an example of how a multi strategy approach can be used, particularly in an under studied field, where to research effectively one must first explore the sociological landscape and establish the contextual background of the study. I have set out the approach that best suited my research objectives and ethical imperatives, with a practice-based exploration considered an effective mode of developing understanding in this area of social work (Shaw & Holland, 2014). Whilst qualitative in nature, I exemplify the added value that quantitative variables have provided to a multi modal study, without jeopardising the epistemological framework or ontological outlook. I have acknowledged and made explicit my positionality within the field, explaining how reflexivity required an uncovering of my own sociological values and principles, from which I was able to make transparent the dialectic aspects of research activity whilst generating a trustworthy and authentic research output (Guba & Lincoln, 1994). I have acknowledged the critical issues faced by the study and the steps that I took to overcome them. This concludes the first section of the thesis; over the next three chapters the research findings are presented.

Chapter Four: An Overview of the Descriptive Patterns within the Data

Introduction

This first chapter in this section provides the reader with an overarching exploration of the key findings from the two phases of the research study. First, there is description of the children and young people's Cafcass files, where the quantitative commonalties, variances, and insights are outlined. Then the data collected from the workshop with members of the Young People's Board is presented. In the subsequent chapters, the findings from both phases of research are synthesised and thematic analysis of the qualitative findings are developed with reference to the literature reviewed in this thesis.

Phase One: Demographic Data and Family Issues

The earlier methods chapter detailed the types of information held about children and young people by Cafcass and how the files were examined to suit the data needs of this research study. In summary, the review involved reading the child's plan, the court report, court orders and both management and practitioner recording on the file to obtain data in line with the research extraction tool. The files involved in the sample (n=50) 'closed' to Cafcass between July 2019 – March 2020. Children's ages ranged from six to 17 years (median age 10.5), as categorised in Table 2. Within the files, just over half of the sample children were of white ethnicity (16) and the second highest recorded was that of young people of black ethnicity. The gender of the children was broadly evenly split, between male (24) and female (25), with one young person identifying as transgender.

Table 2 Case File Data Sample by Categories

Age in categories	6-8	9 - 11	12-14	15-17
	16 (32%)	15 (30%)	11 (22%)	8 (16%)

Table 3 Case File Data Sample by Ethnicity

Ethnicity	White	Black/Black British/ Caribbean/African	Asian/Asian British	Mixed/Multiple Ethnic Groups
	28 (56%)	10 (20%)	7 (14%)	5 (10%)

Within the sample, 64% of children were involved with Cafcass for the first time. Just under a quarter (22%) were involved for a second time, and a smaller group (14%) were working with the service for either a third or fourth time. The shortest period that a file had been open to Cafcass was 16 weeks and the longest was 96 weeks; the average length of time that files were open to Cafcass was 32 weeks. The Cafcass data on private law case durations is detailed in their annual reviews, providing national figures. Their data suggest that within the same timeframe as the sample, the average duration that Cafcass worked with children and young people within the work after first hearing stage was 41 weeks. This increased to 51 weeks in 2021, and 57 in 2022⁵. Therefore, the files within the sample were open for fewer weeks on average than Cafcass figures, but presented a good cross section, with both shorter running and longer running family proceedings being captured.

The administrative data detailed within files allowed information to be gathered about the presenting need of a child/family as labels are applied based upon the family problem or safeguarding risk. This information is inserted by the family court advisor and can be updated as more becomes known. In most files, there was a combination of family needs. The most cited family risk identified was that of domestic abuse or highly conflicted parents. This finding correlates with much of the existing research around the needs of children and families involved in private law family proceedings (Cafcass/Women's Aid, 2017; Harold, et. al 2017). In 56% of files, high conflict was recorded as a family problem. Domestic abuse was the second most common need, recorded in 40% of files. Within many files, there were several needs identified for the family. The recording of multiple needs is reflective

⁵ See Cafcass Annual Reports 2019-20, 2020–21, 2021-22

of the research around the multifaceted problems faced by children and families involved in private law proceedings more generally (Roe, 2021). It was common for emotional abuse, neglect, alcohol and drug use, mental health, or physical abuse to be present alongside domestic abuse or high conflict, thus, indicating the complexity of the needs of children and young people involved in the sample.

Indicators of Children's Involvement within Cafcass Files

Hargreaves et al., (2022) identified that children become involved in their family court proceedings when the court makes a direction for a social worker to prepare a welfare report. They make this assertion as, within these reports, practitioners are obliged to carry out an enquiry with reference to the welfare checklist, which is a list of items that must be contemplated when making decisions for a child under the Children Act 1989. The first consideration within this list 'the ascertainable wishes and feelings of the child', necessitates practitioners to work directly with children to provide the court with their views. The report commonly completed by Cafcass in private law family proceedings is named a Section 7 report. Within all the files reviewed as part of this study, Cafcass had been directed to produce such a report. Therefore, congruent with other research in this field, the study recognised this marker of child participation, and examined what this meant for how children and young people were involved in their family court proceedings.

The Role of Family Court Advisor

The first step taken by Cafcass to prepare this report is to appoint a practitioner to work with the child and family. The review established that, typically, the children and young people involved in the sample had been allocated two substantive workers, the practitioner who completed the Safeguarding Letter (in the work to first hearing stage) and the family court advisor who prepared the Section 7 report (in the work after first hearing stage). Children did not (generally) have any communication with the practitioner in the first stage, therefore the review focused on how their involvement unfolded during the latter stage. During the second stage, the family court advisor has a substantive role: interviewing the parents, meeting the child, and completing the court report. They are also responsible for attending court to provide evidence on the recommendations made by Cafcass. Furthermore,

they are accountable for overall case file management and any further work completed during the proceedings, such as follow up communication with the parents/children.

A small number of young people experienced a change of their family court advisor (6). However, the remaining children had the same practitioner throughout the second stage and until their proceedings ended. Whilst this is a relatively small sample and the results cannot be used for generalisation, it was important, when contextualising the experiences of children and young people, to ascertain whether they experienced a change of worker during this process. The impact of a change in social worker on families who encounter social work services is well documented within the research (see Stability Index Report, 2019; Blueprint Project, 2005; Oliver, 2010), causing upset, frustration and increasing instability for children as they negotiate new relationships during a difficult time in their lives. By contrast, relatively few children and young people within the sample had to deal with this added stress. From reading children's files, I was able to ascertain that the main reason for a change in worker was due to their family court advisor becoming absent from employment.

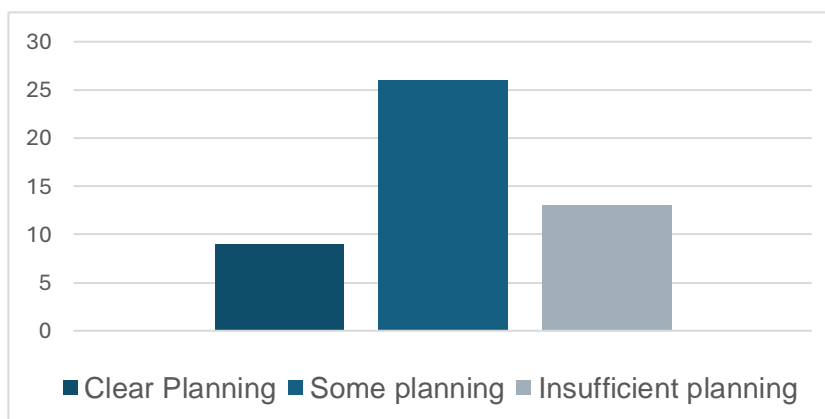
Planning for Children's Involvement

Once a practitioner was allocated, a primary action required, as set out within Cafcass practice guidance, is to plan their work with a family. The child's plan is an organisational tool on the electronic case management system which helps practitioners identify risk and establish the strengths within a family system. They have a set amount of time to complete the child's plan, and compliance with this task is monitored through management file reviews. The plan was a useful source of information for the study, as it provided the details of when children would meet the practitioner preparing their court report. It also included details about how these meetings took place and the methods that would be undertaken with children to ascertain their views, wishes and feelings.

Within the child's plan there were automatically generated prompts which asked the family court advisor to detail how they would make sure that the child's voice was heard and what actions they would take to bring about a positive impact for

the child. A first step taken during the review was to label each file, based upon the degree to which there was a plan detailing child involvement. I set a typology to define how the files were graded (see data extraction tool, appendix 1 for grading rationale). The results of the labelling are detailed in the figure below:

Figure 6 Quality of FCA Planning for Child Involvement



I found that in just over half of the sampled files there was detail of *some planning* for child involvement (54%). A smaller number of files were graded to have *insufficient planning*. In these files, planning was incomplete or prompts specifically related to children's involvement were missing or unclear (26%). The smallest group were of the quality defined to substantiate *clear planning* (20%). This label was applied when there was planning that was individualised to the child's needs, that set out best thinking about how a child would be involved in the court process, with some consideration of participation factors, such as detailing how a child would be updated or what follow up communication would be provided. In the proceeding chapters, there is discussion of the qualitative insights gained through analysis of the child plan. The arising themes are discussed, exploring how the way in which practitioners wrote about children on their files frames their involvement in family court proceedings.

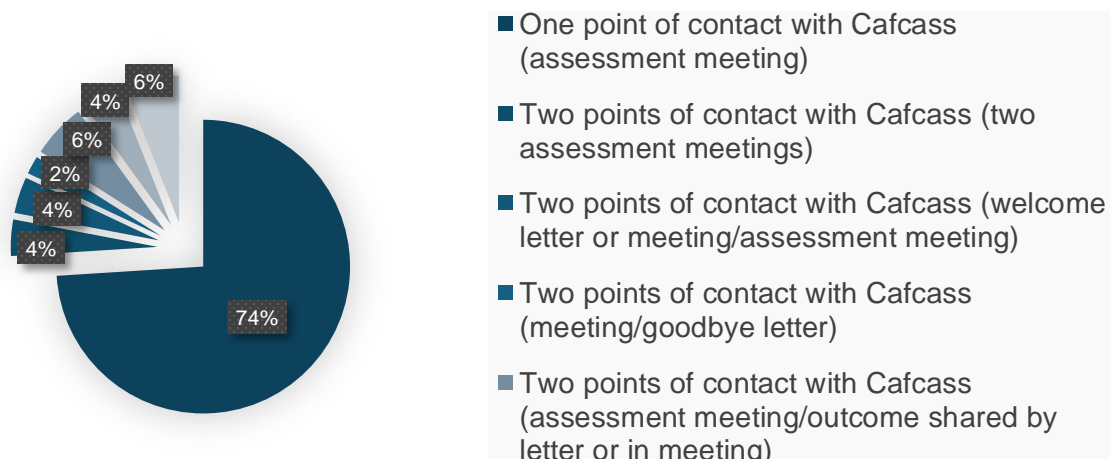
Meetings between Children and Family Court Advisors

Ascertaining how many points of contact children and young people had with their family court advisor during their family court proceedings and how meetings took place was another insight gained through quantitative analysis of the files. The data identified that children frequently met practitioners at Cafcass offices (22),

their home (14) or school (9). Two children had virtual meetings by phone or by telephone and a further two children did not take part in an assessment meeting (both of whom were over the age of 16 and it was considered that the court would not make court orders for them, unless the circumstances were exceptional). On one file, I was unable to ascertain how the meeting between practitioner and child had taken place as this was not recorded. Within a small number of the files (2) I was able to identify that a family member had been consulted in arranging the time and place of the meeting based on child preferences. For the remaining children within the sample (46) there was no evidence that they had a say in where they met with the practitioner, the frequency of contact or the way their meetings would take place.

As depicted in Figure 5, the children within the sample mostly had one point of contact with a practitioner; this was on the day that they met for the purposes of a Cafcass meeting. Eleven files were identified to have a second or third marker of contact between child and practitioner. Of these children, two received introductory communication by way of letter or in person meeting, in addition to their assessment meeting. Another young person was sent a goodbye letter after the assessment meeting and three received communications to inform them of the outcome/decision of the court. Within three files in the sample, young people received both introductory and goodbye communication, which in addition to their assessment meeting meant that they had three markers of contact with Cafcass.

Figure 7 Contact Frequency and Type between Child and FCA



I isolated files for further analysis where there were additional points of contact, to explore any emerging patterns. Analysis identified that for one child, the court suggested that the family court advisor should meet them again to see if their views had changed (six months had passed since their first meeting with Cafcass). For the second, the practitioner observed a session of supervised time between the child and parent. Analysis did not provide a rationale as to why some children received a point of introductory contact and others did not, or why some young people received information about the outcome of their proceedings whilst this was missing for others. It was not identified that age, for example, led to increased contact points.

Similarly, analysis was undertaken to examine if the length of proceedings triggered an extra point of contact. There were four children who were involved with Cafcass for over a year, none of these children received more than one point of contact from Cafcass. I hypothesised that the nature and frequency of the additional contact a child has with Cafcass was influenced by individual practice of a family court advisor or court direction.

The Assessment Meeting and the Influence of What Children Say

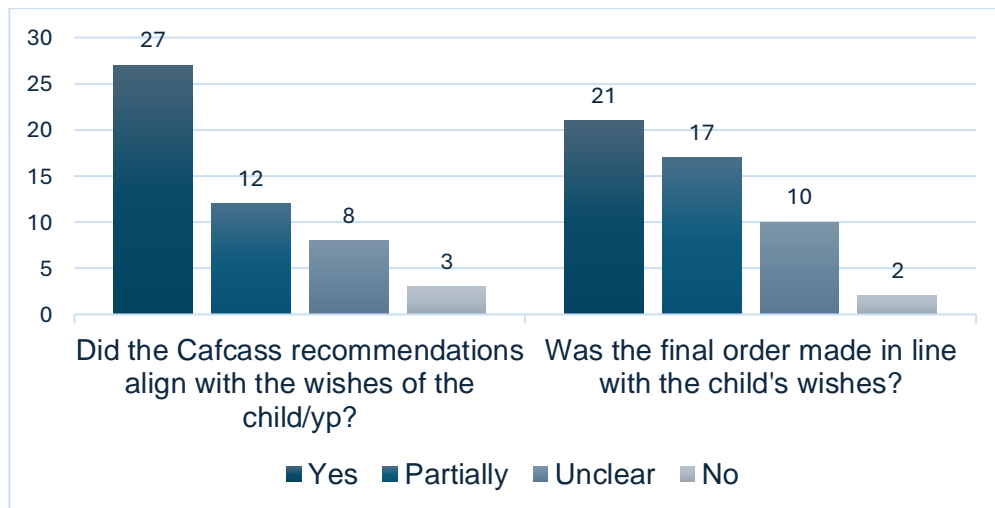
A final area of quantitative analysis considered what happens when children and young people meet family court advisors, and what influence their views have on Cafcass recommendations and court decisions. The data established that it was characteristic of Cafcass practice to consult with young people about family issues and particularly the decisions being considered by the family court. This occurred during what I framed the *assessment meeting*. It was in this meeting that information was exchanged from the child to the practitioner about their wishes and feelings about a potential court decision. The review established that there were many ways that meetings took place, with practitioners using child-focused activities to understand their experiences.

In all files reviewed it was possible to identify that the family court advisor had completed a specific and focused activity with the young person to find out their views. Practitioners used children's drawings or words to gather views (18). Letter

writing⁶ was a popular way of capturing the words and expressions of children, involving the practitioner supporting them to write a message setting out their views (11). Social work tools ‘the worry-o-meter’⁷ or ‘three houses’⁸ were also used (5)⁹. When examining how children’s words were represented in court reports, the files were graded to examine the extent to which their own words or expressions were featured. In just under half of files, young people’s words were sufficiently or extensively used within court reports (41%) and in the remaining files, children’s words were either not used or minimally used (see data extraction tool, appendix 1 for grading rationale).

The data was further analysed to examine if there was a link between children’s views on what should happen in their lives and the recommendations made by Cafcass and the decision of the court.

Figure 8 Children’s Views and Decision Making



For many children, the recommendations made by their family court advisor were in line with their views, in terms of their living and spending time arrangements. Within just over half of the files, it was found that Cafcass made recommendations

⁶ ‘What I want to say’ is a letter template designed by Cafcass to use with children and young people so they can send their own message to the judge/decision maker.

⁷ The ‘worry-o-meter’ is a Cafcass adapted practice aid tool which encourages the scaling of emotions and is included within the How it looks to me practice toolkit for practitioners

⁸ ‘The three houses’ is a practice tool, originating from the ‘Signs of Safety’ model and used widely in social work practice, helping children to express their areas of safety, worry and hope in their lives.

in line with the views expressed by children (27). For a smaller group, recommendations partially aligned with what they said (12). In three files, the practitioner's assessment did not align with child views (in the remaining sample, it was not sufficiently clear from the recording to apply a label).

When looking at the relationship between children's views and court decisions, for almost half the sample decisions aligned with what they had said (21). For a slightly smaller group within the sample, decisions were partially line with their views (17). Finally, within twelve files, it was not possible to detect a similarity, or I coded that it appeared that decisions made were not in line with the views expressed by the child or young person.

Phase Two: Composite Examples of Children's Journeys Through Court Proceedings

The data set examined so far is that of a small-scale review, the limits to which have already been acknowledged when considering the relevance of general representation. The activity did, however, provide a contextual background of the children involved in private law family proceedings and their family issues. It also generated insight into how children are involved when their families come to court and enabled the study to examine the ways in which children share their views, wishes and feelings with Cafcass. It produced understanding of how often what they want to happen is recommended by Cafcass or aligns with the decision made by the family court. These insights, along with the qualitative themes identified through analysis of the written records, were used to draw together a sample of compositive scenarios which demonstrated what a child's journey through private law family proceedings could look like. The scenarios were used in the second phase of research, the workshop with 21 members of the Young People's Board, to examine the themes and patterns with those with lived experience. Prior to presenting the information gained through the focus groups, the composite scenarios I designed are discussed briefly below with reference to the data.

Image 1 Logan

The character of Logan had one meeting with a family court advisor, occurring at the Cafcass office which was typical of the data. The assessment meeting provided

a space from him to express his views, and he wrote a letter to the judge, a way in which many children were seen to express their views in the files. I added prompts and thinking points were added to the poster based upon the information that was found within the files. Examples include, children had told practitioners about happier times when their parents were still together and wanted things to go back to the way things were, children also said that they had missed school to meet with Cafcass and some told practitioners that meeting them was less daunting than they expected.



Logan's scenario was based upon the information within the files that additional points of contact were limited and therefore his involvement ended at the point of the Cafcass meeting. I hypothesised how this may feel to a young person by adding the final dialogue around what Logan may have been thinking in the months following.

Image 2 Karina

Karina is a young person whose family are involved with court proceedings for a second time, an experience found for a small group within the sample. She had been given information about the court process, which aligns with a qualitative finding examined in the subsequent chapter that, generally, more information about the family court proceedings was provided as age increased. Another topic that

has not been discussed yet but will be covered subsequently, is that she does not think that her practitioner knows that she has been involved in family justice before. This reflects a qualitative finding that there is no identifiable data about how Cafcass re-engage with children and young people involved in multiple proceedings during childhood. The research activity with the Young People's Board further established this finding, when reflecting on the lack of joined up thinking for children who face repeat proceedings.



There is mention of Karina's words being used in the Cafcass report, which was seen in some cases. A final point to note is that the composite scenario included the data point that a small number of children received follow up contact from Cafcass, which explained the outcome of proceedings to them. I added comments about how Karina may be thinking and feeling based upon my reading of the files.

Image 3 Wren & Jamal

The final composite poster provided two further scenarios through the characters of Wren and Jamal, exemplifying other data points found in the files. The narrative created around the character of Jamal mentions the absence of planning for child

involvement, seen in 26% of files, and the lack of feedback provided about court outcomes.

The scenario details that Cafcass recommendations aligned with his views, as evident in 58% of files and Jamal was provided some additional information about the court proceedings, being told what a court order is (a theme to be covered in Chapter Six).

Wren's scenario provides other data points derived through early analysis. She met with the family court advisor at home, as seen in 28% of files, and on two occasions, as identified in

22% of files. The duration of her family court proceedings was on the shorter timescale, at 29 weeks. Wren's file demonstrates that though she wrote a letter to the judge it was not included in the report to court, an example of the 59% of files where it was not possible to identify that children's words had been used in the report to court.

The Workshop Participants

The workshop involved 21 members of the Family Justice Young People's Board. Participants were aged between nine and 24 years, five of whom were male, and the remainder were female. All had experience of family law proceedings in childhood. As detailed in Table 5, members spanned several categories of ethnicity, over half the participants were of white ethnicity and the next most recorded was that of either Asian ethnicity or those from multiple ethnic groups.



Table 4 The Workshop Participants by Age

Age in categories	9 - 11	12-14	15-17	18 +
	3	2	8	8

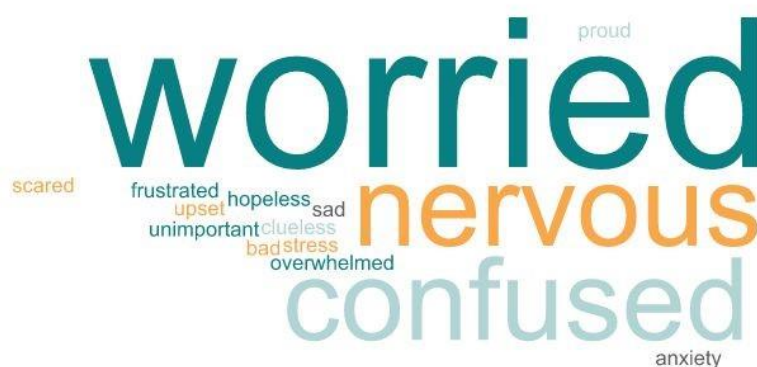
Table 5 The Workshop Participants by Ethnicity

Ethnicity	White	Black/Black British/ Caribbean/African	Asian/Asian British	Mixed/Multiple Ethnic Groups
	12	1	4	4

The Participant Responses

The poster exercise extracted some general thoughts and comments about what it is like for children and young people when their family comes to court. The most prevalent terms used to describe how the characters depicted within the posters may feel were 'worried', 'nervous' and 'confused' (Image 4).

Image 4 Word Cloud Generated Using the Participants Words and Expressions



From the answers of the participants, it was evident that many empathised with their posters character based on their own experiences of family justice. Some said, 'I feel bad for ...', 'I feel frustrated for ...', 'I felt I could relate to...' and when sharing their thoughts with the wider group there was use of personal experiences to support their views.

Participants within the workshop felt it was important that children were meaningfully involved in the family court process, providing many reasons for this

including: it helps manage the worrying feelings associated with the court process, it is important that their views are heard and affect court decisions, it provides information around what is going on and can provide reassurance when told that the process has ended. During the workshops, some responses suggested that being involved in family court proceedings can be difficult for children, and that it may not be easy or straightforward. However, the group unanimously felt that just because it may be difficult, it should not prevent them from taking part. Further responses from the group about why being involved is important, and how this should happen, are detailed in the tables below. I modified the responses, detailed below in abridged/edited form for readability, which were written on sticky notes and white chart paper by the participants during the research workshop.

Table 6 What Does Being Involved Mean?

What should involvement look like?
<ul style="list-style-type: none"> ▪ Help children learn about the court proceedings/process ▪ Use exact words ▪ Children should be given choices - to see the judge/court/write a letter to the judge/video from judge ▪ Each child in family should have their own voice ▪ Sibling opinions should be treated differently ▪ Child engagement will look different for different children in the same family ▪ Different ages have different needs ▪ The older you are, the more responsible professionals think you are. It shouldn't be based on age but by the individual ▪ Letters should receive a response

Table 7 Why is Being Involved Important?

Why is it important to have opportunities to take part?
<ul style="list-style-type: none"> ▪ They can let out feelings ▪ Can help ease the anxiety and stress, which can affect a child's every day, caused by long/delayed proceedings ▪ Children feel happy and proud when involved ▪ Their views are heard ▪ Their views are taken into consideration for life changing decisions ▪ Builds trust ▪ Children have a right to participate ▪ They learn about court proceedings and what this means for their family ▪ Provides closure when proceedings end

- Prevents children from coming to their own conclusions – which may be wrong, provides answers

I also collated the responses from the brainstorming exercise where participants used sticky notes to provide advice to others. See their responses in the advice board below, which details the information they would share with a friend on learning that their family was going through private law family proceedings. I created this poster during data analysis using the verbatim responses of the participants. A second advice board was prepared when considering advice for professionals, which is provided in Chapter Five.

Image 5 The Young People's Board Advice for a Friend



Conclusion

This chapter details the pertinent quantitative findings gained through the review of children's files. Furthermore, it has introduced the reader to the insights gained through the research workshop with the Young People's Board whose responses provide a critical reminder that listening to children is not enough and that rights-

focused practice requires us to take them seriously. The subsequent thematic chapters contrast the research findings from the workshop with the qualitative findings from the case file review, as attention is given to the existing participation literature. In Chapter Five, the findings establish what children's participation looks like in the context of family justice at the time this review was conducted. In Chapter Six, the competing paradigms that exist within this area of practice are examined, the 'knotty issue' (Forrester, 2024:154) of children's agency is explored and attention is given to how this can at times be in tension with providing protection and help. Furthermore, thought is given to how children's participation rights within private family law can be upheld.

Chapter Five: Children and Young People's Involvement in Private Law Family Proceedings

Introduction

This chapter explores children and young people's involvement in their family proceedings by concentrating on their participation rights and examining how they are fulfilled. Drawing upon the findings from both phases of data collection, the chapter deliberates the opportunities that children have to express their views within Cafcass private law practice. Elements of routine practice that were observed within the files and reported by the Young People's Board are delineated in this chapter, which begins by providing an exemplar of what the findings revealed as standard practice. The exemplar is based upon the amalgamation of several files from the review sample, which shared similar features in relation to how children engagement unfolded. It is used to help probe what standard practice looks like and examine what this means for children's participation. Throughout the chapter, aspects of routine practice are contrasted with outliers to explore the alternate participatory approaches taken by practitioners and factors that influence children's involvement. The data is organised into three main sections: (1) child-focused planning and communication, (2) providing opportunities to take part, and (3) representing what children say.

It is acknowledged that 'the child's right to be heard' is just one of the individual rights held by children and young people, that family court advisors are tasked with upholding within their work. Yet, it is the first factor within the Welfare Checklist (s8. The Children Act 1989) and is a fundamental tenet of the UNCRC, being equally connected to and inseparable from all other rights enshrined in the convention (see General Comment No. 12 2009). As such, investigating the data in the light of these rights enabled me to understand the experiences of children and their involvement in family proceedings. The purpose of the discussion is not to be critical of the recording practices or actions of practitioners. It is recognised that participation can be difficult to achieve and is a complex process embedded in cultural, social and significant relational contexts (Lansdown, 2005). Rather, it intends to trace the similarities and differences within the data, gaining insight into

children's experiences and findings that may be useful for practice. The practice reality of involving children within the judicial context where practitioners are also tasked with protecting them from harm and other welfare factors, is given necessary attention in Chapter Six.

Image 6 A Practice Exemplar

Sally who is aged eleven, and her family were involved in private law family proceedings because her parents separated, and a decision was needed about where she lived and how her relationships with both her parents would be supported. The court determined that a Section 7 report was required from Cafcass, and a family court advisor was allocated to prepare a report which provided Sally's views, wishes and feelings, included the views of her parents, assessed the risk factors and made recommendations about what was in Sally's best interests.

Child focused planning and providing information in child friendly formats: Prior to meeting Sally, the practitioner planned their work and recorded this on the Cafcass electronic case management system, within which it is recorded: *Sally needs to be spoken to and an understanding gained of the impact on her of the separation. Tools will be used, and she will be encouraged to write a letter to the judge.* At the time that Cafcass began working with Sally's family, her parents received a welcome letter from Cafcass; however, Sally herself did not receive any communication from Cafcass until the day that she was brought to meet with the family court advisor for the assessment meeting. It is recorded on the file, that during the assessment meeting, the practitioner explained to Sally the purpose of their meeting, the limits to confidentiality and the role of the family court judge in making decisions for her family.

Engaging with children and young people and providing opportunities to take part: When meeting with Cafcass, Sally spoke about her hobbies and interests, she spoke about her parents and the changes that had occurred in her family. Sally was told that the family court advisors' job was to tell her parents and the family court what she wanted to happen, and that this was one of the many considerations they would consider when decisions were made. She was helped to write a letter to the judge to express her views, wishes and feelings, it said: *"Dear Judge, I would like to be able to see my dad when I would like to on weekends because I think that it is important for him to be able to see me out of the contact centre. I would like him to take me to football matches. Also, I would like to be able to see my grandmother and uncle as I used to have a close relationship with them and have not seen them in 6 months"*. Sally met with Cafcass once and received no further contact or communication with Cafcass.

Representing what children say: Sally's letter to the judge was embedded within the Section 7 report that Cafcass prepared for the court. Within the report the family court advisor assessed the risk issues and provided an assessment of what they thought was in Sally's best interests. The recommendations of Cafcass and the decision of the family court mostly aligned with Sally's views. There were additional decisions made, about which Sally's views are not known. For example, it was decided that Sally should speak to her father by way of video phone on Wednesday evenings, that school holidays should be split, with Sally spending equal time with each parent, it was decided that she should spend half of Christmas day with each parent. The court nor Cafcass had any contact with Sally to explain the decisions that were made for her; on her file it was recorded that this task was the responsibility of her parents.

Comment on the Practice Exemplar

I have used a practice exemplar to demonstrate some of the typical features that were found when examining children's experiences of participation within their family court proceedings. I chose not to use a real case example given the ethical considerations discussed in Chapter Three, maintaining confidentiality so that no file was identifiable in the research, though it is likely that many families with experiences similar to Sally will recognise this pattern of engagement. Over the following paragraphs, I explain how the features in Sally's case exemplify a 'typical' set of experiences.

The practice exemplar sets out the way that, procedurally, on first being assigned to a family, practitioners were required to describe how children would be involved in their work when completing the child's plan. The findings established how practitioners write about the task of involving children and young people in their family proceedings and take action, by providing opportunities to take part. It reflects the finding that, in most of the files reviewed, family court advisors recognised that, when meeting children, they needed to explain their role in the court proceedings, talk to them about their experiences of family life - including how life was generally, their feelings about their family - and understand their views on the issues raised in the court application, referred to as the 'family problem'. Further, as outlined in the previous chapter, it was found that in almost all files, practitioners completed specific and focused activities to ascertain their views: with children being routinely invited to use letters, drawings or complete worksheets as a means to express their views in their own way. In the exemplar, it is seen that the child's letter is provided to the court as a way of representing their views within the court report.

The example highlights how children's views were often seen to align with Cafcass recommendations, particularly on the primary issue the court was dealing with. However, it also exemplifies that there are other recommendations made for children, about which they are not consulted. It was routine practice for family court advisors to consider how a child's relationship with their non-resident parent would be supported within their reports, but analysis established that children's views on

these issues were rarely noted. A final finding of routine practice that is exemplified here, is the absence of feedback and follow up communication that children and young people receive about their family court proceedings. Analysis established that children's involvement ended at the conclusion of the assessment meeting in almost every case, with it being unclear how decisions were shared.

Over the remainder of the chapter, the findings of routine practice will be expanded on using examples from both children's files and responses of members of the Young People's Board, thus presenting findings from each phase of research. Contrasted with outliers and exceptions, the reader will develop a deeper understanding of how children and young people are routinely involved in private law family proceedings, based on the data examined.

Child-Focused Planning and Communication

Over the next few paragraphs, findings are presented from both phases of research centred around how child focused planning and communication is used to support young people's involvement in their family court proceedings. The review of children's files identified that the plan is a section of the Cafcass case recording system where practitioners wrote about the 'where', 'when' and 'how' they intend to facilitate involvement. There was evidence around planning for child engagement within many files, and the review established that the priority for practitioners included meeting with children to establish their views, wishes and feelings. Key factors that they considered included: the family history, the presenting issues, strengths within the family system, the age of the child, and methods or approaches to working directly with children.

Task-Focused Planning

As discussed in Chapter Four, a small number of files (10) were deemed to exemplify characteristics of participatory recording, as set by my typology. Files that did not meet this criterion lacked explicit consideration of children's needs and what their involvement would entail. Or, as seen in all the examples below, recording was universal, task-focused rather than child-focused and could have been written about any young person involved with Cafcass.

See parent and child within 4 weeks.

FCA writing on Alisha's file, aged 7

To be seen separately and preferably in school as a neutral venue.

FCA writing on Kirsty's file, aged 15

I will meet with the children in a neutral environment, possibly school or the Cafcass office and ensure that appropriate direct work is completed.

FCA writing on Larissa's file, aged 11

Recording, therefore, focused on the 'where' and 'when' a child would have the opportunity to meet Cafcass, but the detail around 'how' this would take place was limited. The reference to 'direct work' suggests that some type of method will be employed, what exactly that means for the individual young person is not, however, given attention. This point around direct work, will be returned to shortly, when the findings around children's opportunities to take part are discussed. The emphasis on neutrality, mentioned in Kirsty's file, was seen consistently. It appeared that both the Cafcass office and school were seen as neutral venues, with the family home being perceived to affect how children express their views, wishes and feelings. The extracts above, and as was mentioned in the previous chapter, demonstrate that children did not have the ability to influence where meetings took place. Though practitioners may consider school a neutral venue, research into the views of care experienced people remind us that having professionals visit school is exposing and makes their differences visible (Mannay et al., 2017). This suggests that young people who experience social work services have differing views to adults regarding the conditions needed for a successful meeting.

Child-Focused Planning

Though the type of planning and communication seen in children's records considered child-focused did not extend to them being consulted on where their meetings with professionals should take place, there were examples that gave increased thought to involvement. This was seen when the individual needs of the child were considered, and practitioners established the focus of their engagement and the issues about which they would consult with children. As exemplified below:

I will meet with Cathy at her home I will talk to Cathy about her experiences of her father and her wishes and feelings - why has she refused to see her father- what needs to happen to make this change.

FCA writing on Cathy's file, aged 15

This example demonstrates an individual consideration of Cathy's experiences, the importance of establishing her views and these being central to ideas about her future, although the presumption that she should be seeing her father is worth noting. The level of detail within the child's plan did not necessarily correlate with quality of practice, it was interesting that some records suggest individual and forethought about the circumstances of the child, while others appear more routine and universal. Similarly, in the further example below, we can see the thought that was given on how best to involve Kayden, a child who was undergoing diagnosis for a neurodevelopmental disorder at the time of his family court proceedings:

Kayden is able to communicate and share his views however this will need to be put into the context of how much he understands. Kayden may not wish to see me initially so several visits may be needed to get his views and wishes. I will endeavour to work with the three houses tool however it may be that he does not wish to use this. Kayden's voice to be heard.

FCA writing on Kayden's file, aged 7

The writing on his file suggests that Kayden has an ability to refuse to meet with the family court advisor and decide how he chooses to share information. The recognition that engagement was voluntary or that young people have a choice in the way in which they participate was not a popular feature within the files, and this file is an outlier in that respect. Lundy's (2007) research into participatory approaches recognises that some young people need help to form a view but that it must always remain their free expression, which is conveyed through a means of their choosing. The extract concludes with the command that his views must be heard, a sentiment that is also demonstrated in the extract below, which suggests that gathering the young people's views is instrumental to understanding their circumstances and making child-focused decisions.

There is a need to establish what the children want to happen next given their age and their possible views as to time spent with their father. Given the absence of safeguarding issues, the views of the children are of vital importance to the court.

FCA writing on Roddy's file, aged 9

Both examples reflect the finding that in some files, there were comments, which portrayed sentiments associated with a rights-based ways of thinking, acknowledging the importance of children's voices. Within the writing on Roddy's file, it is suggested that rights to participation may become more complicated if there were safeguarding issues when his views may not be the most important factor. This implies that the child's right to be heard may be in competition with their right to protection. Balancing child protection with child participation was an issue seen in multiple files during the review, which is why this requires fuller analysis in the next chapter.

The importance of practitioners planning their work with children and young people was considered by members of the Young People's Board. One participant felt that those working in family justice must remember that children and young people are "*not just a number*" and the quality of recording on children's files was advanced by members to reflect the quality of the service received. As represented within the sentiment below:

"If a child's plan isn't completed and recording is poor then perhaps, they too have been left with an unanswerable, unexplained void".

FJYPB workshop participant

Though a poignant response from the Young People's Board, the findings did not fully establish that the quality of recording directly correlated with quality of practice. I did observe, however, that participation-engaged practitioners wrote on files in a way that concentrated on their involvement, which was seen to follow into the way that they provided opportunities to take part and represented what children said. There were also times that case recording was minimal, but children's views were still well represented. This illustrates the very real possibility that practitioners did not fully record their participatory activities with children, which is a potential limitation of case file research design.

Sharing Information

Sharing information at the beginning

The final paragraphs within this section move on to present the findings around the types of information that children received during the family court proceedings. Quantitative analysis established that most children received one point of contact with Cafcass. Therefore, files where there were additional points of communication either prior to the assessment meeting (as a form of introduction) or following (by way of feedback/decision sharing) were outliers in practice.

In two files within the sample, children received a Cafcass introduction letter. These letters could be generated from the electronic case management system and were titled Child Impact Assessment Framework Letter (linked to the Cafcass practice framework established in 2021). The letters provided information on who their family court advisor was, why they were meeting and the role of Cafcass within the family court proceedings. This was the clearest example of information being provided to children and young people about the broader context of the role and function of Cafcass in the family proceedings.

An area of information sharing that appeared more routine practice within the files was the way in which practitioners explained their role and the purpose of their work to children within the assessment meeting. The example below, captures how the practitioner intends to go about this task:

I will introduce myself to Laura and explain the role of the FCA including answering any questions that she has. Laura is clearly aware of the proceedings given that she has met with the judge. Laura is keen to share her views which would suggest she has already thought about this and therefore the direct work tool that I will use with Laura is 'my plan'.

FCA writing on Laura's file, aged 14

The writing within Laura's file acknowledges that young people may need help to understand the role of family court advisors and recognises that they will have differing levels of awareness, which requires a response. This is further emphasised in the extract from a member of the Young People's Board below:

“There are so many people involved, children need to work with one person. It’s hard to understand who is doing what and its actually exhausting meeting lots of different people and new people all the time”.

FJYPB workshop participant

As suggested by the member of the Young People’s Board, children might be unclear who their family court advisor is, which is compounded if they have met with several other practitioners or spoken to other adults about their family court proceedings. Professionals create an impression from the first moment of contact, which is why, when communicating with children, beginning with an introduction that sets out who the worker is can help, especially given that children who are uncertain or nervous when meeting with professionals can find it harder to retain information about the differing roles of adults (Lefevre, 2018). Despite this general awareness around children’s need for information, it appeared from the sample that family court advisors did not find the task of information sharing straightforward. Though there was an absence of reasoning in many files, the two excerpts below suggest a potential explanation for the resistance toward this task:

A letter of expectations is not deemed appropriate at this stage as it remains unclear what each child understands about the court proceedings and to send a letter without a neutral party to explain this to each child, is likely to cause emotional instability and confusion.

FCA writing on Enoch’s file, aged 14

When organising their work with the family, the FCA rang Amaliah's mother to arrange the appointment, who was told that the best place to see the child was at school. The FCA then arranges this with the school and the visit takes place. On the file the FCA records: 'won't require prep work'.

Researcher notes on Amaliah’s file, aged

10

It seemed that practitioners were cautious about sharing information that had the potential to cause harm to children. This reasoning was also seen when they were young or unaware of proceedings. This finding reminds us that the tension inherent within three arches of children’s rights: provision, protection and participation, interactions between children and social workers can give primary attention to the

first two rights, failing to fully account for meaningful participation. This is despite sharing information with children in advance of meeting them being seen in other studies to particularly benefit children as a means of not only conveying information but helping them to familiarise themselves with the worker (Marchant, 2008). The extract below provides an example of practice where this challenge was overcome using creative methods of child engagement:

I would explain my role using the puzzle analogy. I will show her a copy of the completed work sheet afterwards and inform them that it would form part of my report and ascertain from her how they would like to know what was decided.

FCA writing on Erin's file, aged 7

Within the extract on Erin's file, thought was also given to how information could be shared at later stages, further examination of this file established that this did not take place. This reinforces the earlier finding which established that the quality of recording did not always directly correlate with quality of practice. Erin, who was encountering her fourth set of family court proceedings did, however, receive a letter from the family court advisor to say that their work with the family had ended.

Sharing information – throughout

The ending letter, received by Erin, that was just briefly discussed, was another exception in the data, as only three other children received any type of follow up communication. When it came to considering the information that children and young people need throughout their family law family court proceedings, members of the Young People's Board felt that this was often overlooked. The concept of being '*left in the dark*' was an expression frequently cited, to describe both their own experiences and the situations encapsulated within the research exercises.

Participants spoke about young people being "*oblivious to what is happening*" and "*disregarded*". One participant explained that "*children need information about their own court proceedings*". Another provided the view that young people generally "*want to learn more and get involved*". Thus, emphasising that receiving information about what is happening when they meet Cafcass and

when their family come to court, is central to children feeling part of the process, and fully understood.

The data did not establish that sharing information with children about the family court process, providing updates or sharing outcomes was a reliable feature of practice. When thinking about what this means for their involvement, those writing about participatory approaches, such as Hart (1992), suggest that programmes and initiatives whereby children understand the process and are informed about outcomes distinguishes meaningful participation from tokenistic, manipulative or decorative forms of non-participation. The literature around child participation therefore contrasts with what is occurring in practice, with the review establishing that many practitioners hold the belief that giving young people information may be harmful to them.

Sharing information – at the end

Finally, we turn to consider the findings that reveal the communication that children received at the end of Cafcass work with their family and/or the court proceedings. Within the sample, a small number of children (3) received a goodbye/thank you letter in the weeks that followed their assessment meeting. A further two children within the sample met with the family court advisor after the court made decisions for them to receive feedback about what was decided. On both occasions, the court had made a specific direction asking for Cafcass to take on this role. For another two children they received information about the outcome of their court proceedings by letter. In one of these examples, the decision for the practitioner to share the outcome of the proceedings with the children was also discussed at court.

The length of time that proceedings took was revealed as a barrier to sharing outcomes with children. If there had been a period of months since either the family court advisor met with the young person or the proceedings concluded, it was generally determined inappropriate to send a letter to the young person. Similarly, in some circumstances, Cafcass may close the file before the proceedings ended and this was another reason outcomes were not shared. Both these issues played a part in the practitioner's rationale below:

I have considered whether to write to the children myself, however, as it has been 4 months since I have seen them and I am not aware of the outcome, I did not assess this to be appropriate or beneficial for them.

FCA writing on Sarah's file, aged 7

Qualitative analysis also established it was frequently felt that it was the role of parents rather than practitioners to share the decisions made by the family court, which suggests there is a limited understanding of the conditions children need to benefit from meaningful engagement. Further, it suggests practitioners may not feel that they hold responsibilities to children, with accountability being core to human rights (Lundy, 2018).

Mr Cox had agreed that Chris would be told by him of the outcome of the court as he had developed a strong relationship with his son.

FCA writing on Chris' file, aged 12

Comparatively, members of the Young People's Board considered that family court advisors have a role in sharing outcomes with children and young people. They expressed that not enough was being done by professionals to help children remain involved in the process and understand when, and how, decisions were made:

"If children and young people are told nothing then, they are not being treated right".

FJYPB workshop participant

"Things are missing and there are lots of unknown things. If they are constantly left in the dark they will feel lost".

FJYPB workshop participant

The Young People's Board advocated that receiving feedback is essential to ending a child's journey through court proceedings. A participant referred to receiving a response from family court advisors or family court akin to closure, setting out that when this doesn't happen it results in "*no final messages, no full closure*". Overall, feelings of confusion and disappointment were attributed to children who received no, or minimal feedback with some members relating to those within the posters, when recalling how the absence of information had made them feel:

"I felt I could relate to Jamal because he wasn't informed about the decisions made".

FJYPB workshop participant

Participants thought those involved in decision making needed to be accountable for sharing follow up information with children, conveying that information on processes and updates are essential. Otherwise, children feel isolated from their family court proceedings or may be aware something is happening without fully understanding. They strive for the type of feedback described by Lundy (2018), who uses four factors to characterise useful feedback when working with children and young people. She states that feedback is required to be suitably full, engaging with the substance of what a young person has said; it is to be child friendly and fast, responding timely despite decision making often being slow, and finally; it is followed up, so that there is ongoing conversation during the decision-making process, offering opportunities for further participation and providing transparency around decision making processes. Being answerable to children recognises them as credible commentators in their lives (Coad & Evans, 2008), reflecting a sociology of childhood framing for their involvement (Cowie & Khoo, 2017).

When the files in which children received follow up communication were isolated for further quantitative analysis, the research did not identify any significant variables (like age or case type) to suggest why there were additional points of contact between the child and Cafcass. However, through qualitative analysis, it emerged that these files featured other aspects which may be linked to participatory recording. For example, in some files there was child-focused planning recorded on the file and their views were well represented either by their letters to the judge being embedded within the report to court or their words being detailed. This suggests that the practitioners' overall approach appeared to provide improved opportunities for participatory practice. Poignantly, when I reflected on one of these files, I commented:

Perhaps, the most powerful tool in ensuring children are heard appropriately and involved in decisions is the professionals they come into contact with.

Researcher's notes on Erin's file, age 7

This section has explored how planning for engagement is recorded, revealing how children's abilities to participate may be shaped by expectations according to their age and situation. It set out the information identifying patterns that emphasise that children's participation is complex and contextual (Treseder, 1997). Barriers to participatory practice appear both practical and embedded within practitioner's approaches, which appear, at times, to prioritise children's protection over participation rights, particularly when it comes to sharing information and being accountable to meaningful engagement. These themes will be further explored in later sections and the subsequent chapters.

It is important to note that since this review of children's files took place, practice changes have been implemented. It is now mandatory for Cafcass practitioners to write to children at the beginning of proceedings, and at the end. This change was introduced through the Together with Children and Families Framework, launched in 2021. There is also a focus on sharing Cafcass recommendations with children and keeping them updated about their family proceedings. It is likely, therefore, that should the research be repeated, there would be an increased opportunity to analyse the information provided to children.

Notwithstanding mandatory directive, practitioners may still find it challenging to communicate with young children in a way that privileges their participation rights. As has been seen thus far, practitioners will be weighing up the risks and benefits of protecting children from receiving information that may be worrying or confusing, alongside their participation and information rights.

Providing Opportunities to Take Part

The next section considers findings from the data around how young people's involvement in their family court proceedings is facilitated through their meetings with Cafcass. The findings from the sample established that the assessment meeting was fundamental to ensuring that children had the opportunity to express their views, wishes and feelings regarding the issues within the court process. This demonstrates the centrality of this task as required of Cafcass as determined by Section 7, of the Children Act 1989. Aside from a few exceptions, it was established that generally children's meetings with Cafcass were recorded on their files or within the reports submitted to court, this enabled examination of

the approaches taken when meeting with children, establishing how relationships between the family court advisor and child unfolded, and their views were gathered. These themes are discussed in the paragraphs below, before finishing by looking at several themes that arose out of the research with members of the Young People's Board.

Seeing children alone

When examining their opportunities to take part, seeing children alone and separate from their sibling group was a notable principle of practice, commented upon regularly within children's files. The reasoning for this, is explained in the extract below:

The children will be seen separately to give each of them the chance to express their views, wishes and feelings in relation to their mother's application and their father's views. Tools to use will be This much¹⁰ scaling tools to address how the children see the current contact, where there is room for improvement and what ideas the children may have in relation to this. The tool would also scale how the children see their parents' view towards contact arrangements.

FCA writing on James' file, aged 7

It is suggested that seeing children alone is enough to ensure their individual perspectives are attained. This is reinforced by a member of the Young People's Board, they said:

"Sibling opinions should be treated differently as each child needs to have their own voice".

FJYPB workshop participant

Seeing children and young people individually and separate from their parents appeared embedded within Cafcass practice, and files generally reflected the necessity of meeting with children and young people independently from others. This has become standardised practice in social work where there is child protection concerns and is underpinned in statutory practice guidance (Working Together to Safeguard Children, 2023). It was not surprising, therefore, that this

¹⁰ This Much is a computer-based app used by family court advisors and enables users to scale preferences using animations and images

practice was modelled within the work of family court advisors; ensuring privacy and avoiding interferences was significant to how meetings were organised.

Relationship building

When it came to building relationships with young people, the files suggested that after initial introductions and ground setting, it was routine for the practitioner to establish rapport with the child before focusing more completely on the task of ascertaining their views, wishes and feelings. This is exemplified in the excerpt below:

In the file of Zaya, aged 10 before talking about the family court issues, conversation was held around school and hobbies. They told the FCA that they were attending additional tutoring in maths, history and English. They wanted to be a lawyer when they grew up and enjoyed doing kick boxing. They told the FCA that things were good at home.

Researcher notes on Zaya's file, aged 10

This type of 'getting to know you' activity centred around discussing schooling, friendships, hobbies/interests and schooling. This was likened to the act of "*finding common interests*" which was proffered by a Young People's Board workshop participant when considering how relationships should be built. Those writing about social workers' interactions with children and families have identified several approaches taken by practitioners to build initial rapport, they include 'felt thoughtfulness (Featherstone et al., 2014), 'empathic attunement' or mentalization (Fonagy and Allison, 2012) with ethnographic studies of social work finding this crucial to establishing relationships with children (see Ferguson, 2011, Winter et al., 2017). Being able to establish relationships quickly appeared central to the family court advisor's role, whose assessment work is premised upon brief social work encounters, a feature which challenged by the Young People's Board member below:

"Meeting someone from Cafcass once is not enough time to make a decision".

FJYPB workshop participant

The response of the participant above captures the opinion that professionals make recommendations based upon a small amount of interaction with children. Those writing about current trends in social work practice with children and

families echo this concern, critiquing the decline of time available for social workers to work relationally with children (see Lamming, 2009, Ferguson, 2016). Though the data established that there was a limited timeframe within which children's involvement was facilitated, the relationship built appeared a sufficient basis for the children within the sample to share their views.

Gathering children's views

Turning now to consider the assessment meeting in more detail, when approaching this task, there was frequent reference within files to 'age-appropriate' work being undertaken, suggesting that family court advisors were mindful to having to adapt their practice based upon needs of the child. The use of child friendly language and communication tools such as worksheets, were seen to help young people communicate their views. We have seen the term 'direct work' referred to frequently within the examples thus far, which was denoted as both a method of engagement and an action undertaken to gain their views. It emerged as an overarching concept that described how practitioners perform their work with children. The term 'direct work' is referred to regularly in social work. Furthermore, working directly with children and young people is a central tenant of social work practice, as denoted by Munro in her work on the child protection system in England (Munro, 2011). Though conversely, different meanings are ascribed to what counts as 'direct work' by social workers. For some it is seen as a planned activity that produces a tangible output such as a worksheet or drawing, for others it is anything that they did in their work with children and young people (Whincup, 2017).

When examining the activities undertaken with children, it was evident that there was no single approach to how children and young people were assisted to share their views. Some common child-friendly activities included drawing their family or images of importance to them, completing worksheets, and writing letters. Working directly with children over the age of thirteen was seen more frequently to involve letter writing to the judge or direct conversation. It was evident in the files reviewed, that practitioners may approach the meeting with a plan of work but that would be adapted to suit the needs of the young person, as suggested in the extract below:

Interviewed the children separately at respective schools Billy and Kay did not want to write a letter to the Judge. These children were articulate, and it was not necessary to use any direct work tools to engage and help express wishes and feelings.

FCA writing on Billy's file, aged 11

It was noticeable that for older children, more reliance was placed on verbal communication, as is discussed by Larissa's family court advisor:

Larissa is at an age where she may prefer just openly talking to me about all the issues and topics as discussed above. However, I will have the tools "my thoughts", I will also bring paper to see if Larissa would like to write a letter to the judge. I have had a look at some of the tools and they do not appear to be age appropriate for a 16-year-old. However, should I need to use other tools I can improvise and locate them quickly on the day of our meeting.

FCA writing on Larissa's file, aged 16

The data available through the children's files did not enable elicitation of how the activities were perceived by the children themselves. Further, when considering the role of the adults on whom young people rely on to hear and actualise their views, there was little in the case files which spoke to the skill of the practitioners, and it is recognised that this is not capable of being assessed through an electronic record (Pithouse et al., 2012). Members of the Young People's board, however, considered having the opportunity to voice their opinion an important source of expression. Findings from the workshop established that they considered children feel "*happy*" and "*proud*" to share their views but also cautioned that it can "*add worry to children*", or they may feel "*nervous*". They submitted that children and young people should "*have a choice to be involved*".

During the workshop the participants thought about the conditions young people need to feel included and involved. Their views are expressed in the image below, highlighting the responsibility they consider adults hold in facilitating children sharing their views and making sure that they are heard. The importance of sharing information, explanations and being sensitive to children's experiences was also emphasised (Image 7).

Image 7 The Young People's Board Advice For Adults



Themes Identified by the Young People's Board

There were specific considerations that emerged from the workshop with members of the Young People's Board around children's prior experiences of family justice, language, gender, neurodiversity and other factors of their lived experiences. These factors were represented in some files, whilst not explicitly recognised in others. These are discussed below.

Previous experiences of family justice

An issue explored by the Young People's Board, when considering how children take part, was the experience of repeat family court proceedings. They felt that there was a burden attached to having to "*retell their story*" and reconnect with professionals, faced by children who experience multiple court proceedings during childhood.

“You lose hope that anyone is listening. How do you build trust again”?

FJYPB workshop participant

“The system is archaic it doesn’t link up like if someone has been there before no one knows”.

FJYPB workshop participant

The participants asserted that there was little joined up thinking when it came to those who experienced the Family Court for a second or third time. They submitted that special attention should be paid to those going through family proceedings again, as they may find it harder to build relationships. This theme was given similar consideration within the review of children’s files, it was a finding of the research that there was no discernible difference in how practitioners went about their work with children who had been involved with family justice before. This finding was exemplified when I examined Hannah’s Cafcass file who found herself in the centre of private law court proceedings at ages nine and 13. In the most recent proceedings, she sought to actively involve herself, writing a letter for the court prior to the first hearing. She then met with Cafcass to express her views. After the assessment meeting, she independently wrote again to the court. It did not appear that there was consideration to her experience of earlier proceedings in the way that Cafcass organised their work, represented her voice or made recommendations. Yet, it was evident that she wished to be able to influence the court’s decisions.

The *Uncovering Private Law* series, a Family Justice Data Partnership between the University of Lancaster and the University of Swansea, identified that about a quarter of applications made to the family court are ‘returns to court’ (Cusworth, et al., 2021). This was a finding shared by the study with 36% of the sample having been involved with Cafcass for the second, third or fourth time. There is little previous research available which examines the experience of multiple private law family proceedings on young people, yet we know that children who face multiple episodes of social care provision have complex needs, do not receive sufficient resources and experience worse outcomes (Hood et al., 2024). The example of Hannah suggests that when encountering

proceedings for a second or third time, children may seek greater forms of involvement than others, perhaps given their knowledge of the system or feeling misheard the first time. The findings from both phases of data collection suggest room for development in this area of participation practice.

Language, gender, neurodiversity and other factors of lived experience

The principal focus of this study was to identify how children and young people participate in their family court proceedings through identifying overarching trends. Analysis did not examine specific demographic data such as gender, race and religion to investigate the relationship between these characteristics and participation. This is a limitation of this study and an area for future research. There was, however, an observation made when it came to language, with routine practice appearing to assume English was a primary language for all families, even when it was identified that other languages were spoken. This privileging of the English language was seen in the electronic systems diversity recording, with there being no space to record or identify a preferred language. There were examples where languages such as Arabic or Swahili were identified as the first language of parents, and/or spoken within the home but all information was produced in English and the child's assessment meeting was conducted without a language interpreter. I hypothesised that it may be assumed that because children are educated in English this is their preferred language. There was no evidence, however, that children within bilingual families were offered choice about their language preference.

There was one young person within the sample who identified as transgender, when reviewing their file, I noted that both male and female names and pronouns were used. The child who identified as male was referred to as he/him within case planning and within the recording of the assessment meeting, but within the report to court female pronouns were used. My hypothesis is that this disparity may have arisen due to the young person's legally registered name and gender being aligned with the sex they were assigned at birth. This may be an anomaly in practice, and I had no other examples to examine the distinctness of this finding, but it demonstrates a potential area of development needed to ensure the individual needs of all children and young people are responded to.

There were three children within the sample with identified neurodevelopmental differences. The data available suggested that the same methods of engagement were used as with neurotypical children. An outlier to this, however, was a young child with a diagnosis of autism who was offered two opportunities to meet their family court advisor in person. Further, analysis of the Cafcass tools and worksheets revealed that there was not the breadth of resources required, or designed, with the needs of neurodivergent children in mind. There was practice guidance on how to work with children with a range of needs including sensory impairment, specific learning needs and complex physical disabilities. Yet, I was unable to establish how participation practice was adapted, or activities developed, to assist disabled children or those with different communication needs (i.e., requiring Braille, loop hearing or sign language) to express their views.

Qualitative analysis of the individual needs of children and young people identified some evidence of positive action being taken to elicit the views of children who may experience barriers. The responses of the Young People's Board emphasise that, in the views of participants, all children have capabilities throughout their childhood and were aligned with a competence model of what children can do rather than a deficit model (Holland, 2011).

This section has examined the opportunities that are provided to children and young people to enable them to take part in their family court proceedings. It has considered what working directly with children and young people means at Cafcass and how practitioners approach the task of engaging with their views. Several practice examples highlight the importance of considering the unique needs of children and young people, and patterns identified within the data captured the care and attention practitioners give to facilitating their involvement in assessments. The next section examines how children's views, wishes and feelings are represented, with findings from the case files and workshop with members of the Young People's Board being used to consider how children's views reach decision makers.

Representing What Children Say

Thus far, the findings of the research study have established the way in which Cafcass share information with young people involved in private law family proceedings, plan their intervention and work directly with children to obtain their views. To understand how what they say gets communicated within court reports I looked at how often, and to what degree, children's own words are used, examining the impact of practitioners interpreting children's views before turning to look at the concept of letter-writing as a means to communicate children's views with the family court. The section concludes by considering the concept of age, which has been referenced throughout this chapter, analysing how this affects representing what children say in their court proceedings and a final thought is given to authenticity, again a theme that has arisen several times within the data displayed in this chapter.

The Use of Children's Words

I coded the files to measure the level to which young people's views, wishes and feelings were included within the report to court (see coding framework, appendix 4). Distinguishing occasions that quotes, sentences, expressions, documentary sources were used as the dominant source of conveying their views, from where there was social work interpretation of what the child had said or no clear detail of the views they expressed themselves. Within six files it was clear that the child's own words and expressions were in the court report and for over double this amount, some quotes or sentences were used alongside social work interpretation of what the child had said (14). For the largest group there was minimal use, or no use of their words, within court reports (28).

I reflect on the strength accorded to representing children through use of their own words below:

Within the report to court the FCA has set out clearly what Rafael's views are including his direct work within the report, the FCA does not attempt to add adult gloss or interpretation to his views, aside from confirming that her recommendations align with the child's views. His writing is the focal point of this report.

Researcher notes on Rafael's file, aged 11

Clear recording within child's report about their views, which stood alone without professional interpretation.

Researcher notes on Aya's file, aged 11

The following examples illustrate how children's words, represented verbatim, can help practitioners get a sense of their own sense making:

"[Things are] Not the best, I see him 24/25 times a year, compared to before, it is so restrictive that he cannot take me to football and stuff". I would like to go out on a Saturday, and he can take me to a football match on Sunday. I am sad that I can't see my dad more, I would like to, I am grateful, but would like to do more".

Ali, aged 16

"I do love daddy, but I don't want to see him. I only want to see him in a play centre, where people can watch him".

Alisha, aged 7

"I want to live with my dad for the week and see my mum on the weekends. I want to sleep over at my mum's too".

Aya's aged 11

I found that using children's words was a powerful and authentic way of expressing their views within court reports. In the files where children's words were used, they were situated as the most direct source of authority on their own safety and well-being (Willow, 2003) and their experiences were made clear.

The rephrasing of children's words

There were other examples, where the child's views were represented through family court advisors rephrasing their words, adding their own interpretation and analysis:

Demi was very clear that he does not wish to spend time with his father at his home. I explored this with Demi, and he was of the firm view that he does not wish to meet or spend any time with his father's partner but also that he does not want to see his father's new home, essentially because he finds it very distressing to think about his father having a home and life away from him and their family.

FCA writing on Demi's file, aged 9

I asked Carl what the best thing about spending time with his mother had been, he said that what he enjoyed was “just seeing her”. I formed the impression that Carl was invested in the time spent with his mother and that it was not part of his routine. Carl stated that he wished to return to the arrangement that was in place before his mother made an application to court.

FCA writing on Carl’s file, aged 12

An important responsibility placed on family court advisors is to consider what children say and make a social work assessment of what this means for them, considering their best interests. However, in files where there was interpretation of children’s views it suggested editing and selection had taken place, when representing what they say. In the examples above, though we still gain a sense of what each child wished to happen, we are left to rely on the practitioner’s interpretation - how accurate their understanding is, we do not know. Those who have considered the way that children are represented within family court proceedings suggest that potential questions are raised about the ‘accuracy and completeness of the representations of the reality of children’s feelings to be found in court reports’ (James et al., 2004:197). Furthermore, it risks undermining the authenticity of participation and reducing them to minor characters, when only partially representing what they say (Holland, 2001).

Analysis of the data indicated that the issue of misinterpretation or reinterpretation was overcome more readily when children’s drawings, letters or worksheets were included directly within the court report. The data further demonstrated that the use of children’s letters, as exemplified in the routine practice example at the outset of this chapter, was a means through which children’s views were submitted directly to the court. Including these details was effective in ensuring their views were represented. However, letter writing introduced other issues for child participation and the one-way nature of letters was critiqued by the Young People’s Board, as discussed in the paragraphs below.

Other Ways that Children’s Views were Represented

Letter writing was regularly referenced by practitioners when identifying how they intended to ensure children’s views were heard within their court

proceedings and was a popular method of engaging with children about their views. The Young People's Board, however, thought letters should be part of a reciprocal process. Yet the data established that few children received any form of response about how their words were used, what impact they had, or how what they said affected decisions. When commenting during a research exercise, one participant said:

"A letter back from the judge (or someone) would mean that Logan knows that his thoughts have been taken into consideration".

FJYPB workshop participant

Another participant implied that being able to express a view is only one factor of participation, suggesting that children need to know if they were heard and taken seriously:

"Writing to the judge is one thing but you need to know their response, did they listen, did they take you seriously?"

FJYPB workshop participant

Seeing this form of ordinary practice through the eyes of the workshop participants identifies that children and young people may seek more than to be heard and need their full participative rights actualised. It is important to acknowledge, therefore, that models of genuine participation necessitate that when children consult on issues, they do so in a manner which has 'great integrity' (Hart, 1992:12). Further, in upholding children's rights, individuals and authorities must be accountable to decisions and for outcomes affecting children's lives (The Right Way, 2017). Though inviting children to write letters to provide their views, is a well-intended form of a child engagement, the process of writing messages that are absent a response, may be considered akin with lower levels of participation. Further, it may be considered to fit an adult format of formal communication with the family court, thus imposing adult structures and expectations on children's expressions, acting to exclude children's participation (Prout & Tisdall, 2006).

When analysing the way in which children are heard within their court proceedings, it was acknowledged that children may participate in other ways,

including meeting with the judge. This is cited within research as a further marker of participation, though difficult to research as it not routinely collected in the administrative data (Hargreaves et al., 2024). Data collection identified that one young person in the sample met the judge, (though suggested in one other record, this meeting did not take place). When thinking about this issue with the Young People's Board, one participant said that young people should always be able to meet with the judge. However, the group more generally considered that they should have the choice to see the judge/court or write a letter. Thus, suggesting that there may be exceptions and additional considerations based upon the individuality of the child and their circumstances.

Age

Prior to concluding this chapter, there were two factors which repeatedly arose within the case files when it came to representing what children say: the first being age, and the second being the expressed authenticity of children's views. The Young People's Board provided some important insights when it came to the topic of age, offering differing perspectives:

"Yes, children of different ages will have different needs but focus on what they can understand rather than assuming that they don't or can't understand".

FJYPB workshop participant

"The older you are, the more responsible professionals think you are. It shouldn't be based on age but by the individual".

FJYPB workshop participant

The topic drew particular focus during an exercise which considered the characters from the composite posters:

"Age 100% affects a child's experience. Wren is 10 and therefore due to being younger will most likely have less participation in her proceedings, although she has a right to participate, they may not be aware of these rights".

FJYPB workshop participant

"Their ages would not have affected the experiences they had but how they could respond to the court's information".

FJYPB workshop participant

It was interesting to note that within the sample, children of over the age of ten were more likely to have their quotes, expressions and documents represented in the court report. Within half of the files where there was minimal or no use of their words in court reports, children were under the age of ten. In the extracts below I reflect on three of these files, identifying some issues when considering representation. In the first two excerpts, I was concerned that children's views were not clearly reported, but in the third we can see how a family court advisor has adapted their approach to ensure the youngest child within the sibling group has similar opportunities as their older siblings, using a method of engagement which resulted in their views being well represented:

No intro or follow up communication with Max, and the report provided did not convey his wishes or views in his own words but there was summary by the FCA of what the child wanted to happen in his life.

Researcher notes on Max's file, aged 7

The report focused on addressing the issues in proceedings. Recommended overnight time be introduced but I can't see that this was discussed with Geri or was in line with the wishes she expressed in meeting or that the changes were discussed/shared with her.

Researcher notes on Geri's file, aged 7

Fatima was the youngest in the sibling group and with the letter to the judge it can be seen how the FCA used feeling stickers with the child to help ascertain her views, wishes and feelings. Her letter was included in the report to court.

Researcher notes on Fatima's file, aged 6

There were differences in what manner children's views were represented on account of their age and the data suggested that practitioners saw and sought to understand young people through a developmental 'gaze' (Walkerdine, 1993). This can be linked to the framework established within developmental psychology, discussed in Chapter Two. In some circumstances, children under the age of ten were seen as more vulnerable within parental separation and divorce, whilst others considered younger children less affected it was not clear from the data whether this was solely a matter of age, or if other factors were taken into account by practitioners. There appeared to be an inconsistency, therefore, in how practitioners represented what children said, particularly when

it came to the views of younger children. The protectionist and vulnerability narratives and how they affect how children are represented within their family court proceedings will be developed further in the next chapter. Given that court proceedings are most likely to affect children under age ten (see Cusworth et al., 2020; Cusworth et al., 2021), there is a real need to give attention to the ways that they are heard.

Authenticity

A further factor that appeared relevant to practitioners, when representing what children say within the sample reviewed, was the extent to which their views appeared their own. There have been examples provided already that capture the attention given to deciphering whether a child's views are genuine, further examples are provided below. In the first excerpt, the practitioner comments that a young person has portrayed their clear views, this alongside their age appeared to be important when considering their views. For Ali, in the second example, who also appears to also have expressed themselves clearly, attention is drawn to the influence of others:

Claire is very clear that she does not want to see Mr Hill and it will be very difficult to force her, at the age of fifteen years, into a relationship which she does not want.

FCA writing on Claire's file, aged 15

Ali is able to express her wishes and feelings at 10 years old and the court should take them seriously. However, she has information received from adult sources which may have influenced her views.

FCA writing on Ali's file, aged 10

Within the writing on Claire's file, it appears that there is a strength to what she has said, based on both the definitiveness of her views and age. Contrasted with Ali, it appears that the family court advisor applies caveats to what they have said, given an adult may have shaped their views. Those writing about children's voices in social work assessments suggest that their voices can be silenced if considered subjective, biased or untrustworthy (Hall, 1997). In the next two extracts, further

thought is given to the authenticity of children's views, particularly capturing how their reasoning and validity is evaluated by practitioners:

FCA assesses Zac's views stating that they are reasoned, not trivial and reasonably held albeit from their subjective perspective.

Researchers notes on Zac's file, aged 10

FCA assesses that the children's views were genuine, honest and given their ages, maturity and insight adequate weight should be given to them by the court to reflect this.

Researchers notes on Abi's file, aged 12

In Tisdall and Morrison's (2012) examination of children's participation in court proceedings, they established that children's views that were described as consistent, clear and definite were weighted more heavily when compared to views described as ambivalent, anxious or subject to manipulation or parental pressure. This suggests that how children's views are experienced and represented is significant, as was considered within Chapter Two when examining how children's voices are framed within the sociology of childhood and the issues the concept of competence that arose out of the legal case of *Gillick v West Norfolk and Wisbech AHA* (1985). In the chapter that follows, there will be further thematic discussion of the findings, considering the extent to which children are perceived as reliable characters who can form their own views within the judicial context. I will also revisit the understandings of childhood that were discussed when examining the childhood studies literature in Chapter Two, linking it to the research.

Conclusion

This chapter has explored the data from both children's Cafcass files and the workshop with members of the Young People's Board, to develop an understanding of how children and young people participate in their family court proceedings. The chapter began with an example of routine practice that was established through the review of children's files whereby repeated patterns of child engagement were considered. Variances were also highlighted, identifying the further potential available to centralise children's voices, ensuring that they are

both heard and taken seriously. Practitioners' understanding of participation has been queried, as the concept appears to be applied through an adult theorisation where the process and consequences of involvement may work to exclude rather than provide meaningful opportunities for collaboration. Further, there is evidence to suggest a difficulty in balancing the three arches of children's rights with primacy given to protecting children. Critical attention has been drawn to issues of age, neurodiversity and previous experiences of the justice system. In the following chapter, further thought is given to the theoretic themes that emerged when considering participation alongside how children's rights are balanced within the context of family justice.

Chapter Six: Balancing Children and Young People's Participation Rights within the Realm of Family Justice

Introduction

This chapter builds on the understanding gained so far into the child's journey through their private family law proceedings, by examining the insights gained through data collection. The findings from each phase of data are used to consider how young people's participation rights operate amongst other fundamental rights that are particularly relevant when they are involved in social work processes and family court proceedings. Within the chapter, I interrogate the findings to reveal how practitioners' attitudes toward children's rights are conveyed and what this means for the way in which children are involved in their family court proceedings. Further, the extent to which they align with the views expressed by the Young People's Board is considered.

Within the previous chapter, the findings revealed that engaging with children's views was a practice priority for most practitioners in this study, based on their written records, and thus reflects the advancements made in children's rights practice within family law proceedings (Tisdall, 2017). Yet, there were times that assumptions were made about children's involvement which failed to uphold their right of participation. It appeared that these assumptions involved a view that some forms of participation might affect the practitioner's ability to protect the child from the harm associated with their parents' separation or court proceedings. It was identified that when adopting a protective stance or viewing children and young people through a lens of vulnerability there were consequences for how they were involved in the court process.

In this chapter, the datasets are further investigated to look at the factors that influence child participation, before examining what the language of 'best interest' means when looking through the lens of children's rights. I continue to use data from each phase of research to illuminate key themes, exploring first the concept of age and the presumed capabilities of children, before turning to look at the court orders made within proceedings and how they are an often-overlooked outcome, rarely discussed with children. This is followed by a discussion around the best

interest principle within family justice. Using a practice example, the position family court advisors face when considering children's views and making best interest decisions is presented. How children and young people's participation rights are maintained is a theme referred to frequently throughout the chapter and circumstances when the primacy of protection challenges participation are identified. At several points I reflect on the concept of accountability and how this appears missing from the work of family court advisors particularly when tensions in practice are made clear.

Throughout, attention is given to the duality of the family court advisor's role; with the responsibility to safeguard children whilst also listening to and taking seriously their views. The research findings are used to demonstrate implications for practice, when these priorities oppose each other and the difficulties attributable to operating within the system of family justice are acknowledged. I consider what this means for how children are perceived, particularly when attending to their participation and agency within the court process. The chapter concludes then, by revealing several encouraging findings that were identified in Cafcass' practice of working directly with children and young people. I consider what relationship-based practice looks like within the remit of private law family proceedings and what further steps could be taken to ensure that this is authentic, respectful, and purposeful.

Participation and Protection in Private Law Family Proceedings

The writing within the Cafcass files demonstrated the complex thought that is given to involving children within their family proceedings. There was a desire to ensure that they had the opportunity to take part and that their views were gathered, which sat alongside concerns held by practitioners for how children and young people experienced family separation and the court process. As was seen in Chapter Four, for many children within the sample, experiences of harm were inherent to family separation, with domestic abuse and parental conflict being the two most cited family needs within the data. This may go some way to explaining the regularity with which children's agency was seen to co-exist with concepts of vulnerability in the way that practitioners wrote about working with children:

Malcolm aged 9 is the youngest of the sibling group. Being of a younger age he is perhaps more vulnerable in relation to the impact of parental conflict.... This may have been a confusing and frightening time for the children.

FCA writing on Malcolm's file, aged 9

Jae is 13 years, going through adolescence, how might these proceedings impact her more than a younger child?

FCA writing on Jae's file, aged 13

Molly knows her own mind and is very clear in her wishes and feelings about future plans. However, she has felt emotional stress in knowing her parents have different views about what would be in her best interest.

FCA writing on Molly's file, aged 15

The extracts above suggest that different assumptions exist around how children are affected by family problems and court proceedings, their vulnerability is a source of concern for family court advisors. Practitioners hypothesise around their experiences, with all three quotes suggesting that divorce and family court proceedings were a source of potential harm or distress. The quotation regarding Molly identifies that emotional stress may be faced when caught between two parents with differing views, however, there was also a recognition that autonomy could co-exist. There was little recognition within the files as to how 'value laden' (Brown, 2011:318) practitioners' construction of vulnerability was or how this framing has consequences for the way their participation was understood. Further, we can see that practitioners hold different views about whether age makes a young person more or less vulnerable.

It is suggested that the concept of vulnerability needs to be reconceptualised as it can be dangerously limiting for children and young people, particularly those with disabilities (see Daly et al., 2019), and denotes victim rather than actor status (Esser et al., 2016). This is particularly relevant when children and young people face state intervention, as a focus on vulnerability can prevent adults from appreciating that children need relationships and state support to develop autonomy, acquiring skills and capacity to enable participation as well as protection (Tisdall, 2017). The files did not consistently demonstrate this social understanding of autonomy when describing children's vulnerability, the issue being that centring

their powerlessness or neediness may hinder the realisation that ‘children have rights not just needs’ (Lansdown, 1994:34).

Children’s age

As alluded to already, the data provided a mixed picture about the concept of age and practitioners hypothesised about what this meant for working directly with children and their experiences of parental separation. The chronological age of children featured regularly when planning assessment meetings and considering how to work with them to gather their views, as can be seen in the files below:

Michael 8 years and Maisie, 6 years will both have a good understanding of their parents’ conflict, separation and environmental anxiety. Their wishes and feelings will be sought via direct work. They will be given the opportunity to express their views about their lived experiences and feelings about what they want for the future.

FCA writing on Maisie’s file, aged 6

Jess and Emmet are each of appropriate age and understanding to express their respective wishes and feelings. The ages of the children will mean that they each dictate how they wish to share their views.

FCA writing on Emmet’s file, aged 14

Practitioners did not appear to conceptualise age as a limiting feature when it came to ascertaining their views. Both Maisie and Emmet, despite their eight-year age difference, were seen to have important views about their family situation, whilst Emmet at age 14 was considered to hold a sense of autonomy in how he expressed himself. Furthermore, there is a social constructionist appreciation that these children have their own experiences that constitute their understanding, requiring attention when attending to their participation. A typical finding within the data was that practitioners had little difficulty in recognising that children of a range of ages were able to express a view. There was consideration given to the adjustments some may need but this did not rule out the importance of gathering the views of either younger or older children. Involvement in decision-making, however, appeared more age determined.

As highlighted in the previous chapter, inconsistency arose when looking at the relationship between children’s age and how seriously their views were considered and represented, particularly when it came to the views of younger children. In the

example below, Freddie talks to his family court advisor about his father, expressing a wish to see him, having not spent time with him in approximately five years. The practitioner describes his wish as an idealisation:

It is understandable that Freddie may idealise his father, building up an ideal image of how he hopes his father will be. He has picked up on his father's funny and cheeky comments in letters and this is what he has built his image of his father around. Freddie hopes that his father will be nice, will care for him, look after him and do fun things but should not be mean.

FCA writing on Freddie's file, aged 8

In this example, although the family court advisor may be justified in coming to a different view to Freddie, the way in which his wish is labelled as an idealisation suggests a failure to recognise his expressions as true to him and unique, instead they are presented as 'naïve'. Henaghan (2012), reflecting on the developmental approach to children's perspectives when making family court decisions in New Zealand, suggests that through this paradigm, younger children could have their views ignored on the basis that they were unable to express rational choices. Further, it has been noted by other researchers examining Cafcass practice that age was used to look for expected norms by practitioners and judges when working with children within Hague Convention proceedings¹¹ (Wolfrey, 2024). The findings of this research support this conclusion, with some practitioners' own preconceived ideas about age being noted as a factor that may displace young people's views, having consequences for their participation. The writing on Freddie's file identified how easy it is to silence the child and ignore the understanding that they provide about their family relationships. A further failure to take a young person's views seriously is detailed in the extract below:

His response to all questions was "none of your business". Questions in regard to his family got the same response with the added suggestion that "go to my own house and ask questions". When I asked Raj about his parents' separation, he told me I already knew why they had divorced so why was I asking. Raj seemed highly entertained by his lack of co-operation, eventually telling me to "get lost".

¹¹ The Hague Convention on the Civil Aspects of Child Abduction (the Convention) is an international treaty created in 1980 in response to international parental child abduction. Applications for the return of a child under the Convention are heard in the High Court Family Division by both High Court and Deputy High Court Judges. The work in this area is specialised and the court is supported by the Cafcass High Court Team.

Raj's expressions are interpreted as non-cooperative behaviour. Instead, it could be considered that he may be exercising his agency within a family situation and court process that feel beyond his control or exercising his right to privacy and refusal of professional intervention. Spyrou (2016:116), when reflecting on his research with children, suggests that 'silence is a constitutive element of voice'. Rather than a problem to be overcome, it requires critical reflection and can help shed light on the contexts that produce them. This suggests that instead of reading Raj's interaction as non-cooperative and situating his expressions within the context of meeting a social worker to discuss his family situation, further meaning can be established. Such meaning may include Raj not wishing to disclose experiences or perhaps he is seeking to disrupt the power imbalance where an adult professional comes to his home to ask questions about his life. Bordonaro and Payne (2012) use the term 'ambiguous agency' to describe how adults may diminish, ignore or re-categorise children's expressions of agency as something else when they go against the adult normative view. The findings outlined above, suggest that this may be particularly true for younger children within the sample who, although listened to, were at greater risk of having their views dismissed and whose refusal to participate may be viewed negatively.

The themes discussed above share strong resonances with the work of Holland (2004) who, in her qualitative study of child protection practices more than 20 years ago, examined how children's views were considered within assessments:

some children's voices are not reported and the description of children through developmental norms might be seen to be objectifying them. The children's wishes and feelings were often presupposed rather than discovered through asking or reporting children's opinions. And, in some cases, children's views were reported as untrustworthy ...it seems in social work we come to know partial aspects of these children's lives, and these revealed aspects are those that are mediated through adult perspectives and actions.

(Holland, 2004:85)

This study demonstrates some progress since the work of Holland, particularly considering how routinely children's views are gathered and attended to within the files. However, the data, and particularly the examples found within Freddie's and

Raj's files, demonstrate how professionals may dismiss children and young people as capable of representing their own views and interests and abilities to contribute to decision making. In attempting to expand current understandings of how children's rights, participation and agency can be understood, Valentine (2011) advocates for a social account of agency that is recognised as complex, multidimensional and ambivalent. She identifies that children's agency is 'often seen as impaired precisely because their developmental immaturity is equated with non-rationality and emotion; and whose actions and choices are constrained by their dependence on adults' (2011:351). In the context of private family law, if we fail to take seriously what children say because what they say is not rational or coherent from an adult perspective, there is a danger that we will see only their vulnerabilities, ignoring their capabilities. This becomes more likely if there are tensions between the primacy of protection with participation or if there are contradictions in what children say.

The data identified differences in the attention given to what older children said and how their views were represented. It was notable that older children had increased opportunity to be heard, with those in middle-late adolescence seen most frequently to be represented clearly and their views being taken seriously, further having the opportunity to influence court decisions was seen as of equal importance to their protection rights, as reflected in the files below:

He is at an age whereby he knows his own mind and makes his own decisions regarding any future spending time arrangements.

FCA writing on Alex's file, aged 16

Uzi is almost 18 years old and therefore soon to be an adult. I do not feel it would be beneficial to make an order in respect of him because of his age and in line with his views and wishes.

Researcher's reflections on Uzi's file, aged 17

His wishes and feelings as a mature, intelligent 13-year-old boy are an important factor.

FCA writing on Mohamed's file, aged 13

Older young people were more likely to be seen as experts in their own lives or 'meaning makers' (Reynaert et al., 2009), as it appeared that practitioners more easily aligned their decision making with their views. They did not appear to face the same barriers as younger children, who were more likely to be seen as passive recipients of adult concerns, with the concept of vulnerability leading practitioners to more readily override their wishes (Daniel, 2010). Instead, they were seen to have much to contribute to adult understandings of their family problems and decision making.

The conceptualisation of age demonstrated that practitioners adapt their practice based upon a developmental understanding of how children may best participate and there was an understandable desire to reduce the burdens on children when discussing family topics. Practitioners appeared to consider that age affected vulnerability, though there was a mixed view on whether younger children were less affected because of their seemingly more limited understanding, or more vulnerable given their susceptibility to change. Similarly, older children were considered increasingly exposed to family issues, placing an additional load on them but more liberated in being able to have a say in decisions. This resonates with the findings of Mantle et al.,'s study (2006), which established that when practitioners felt that their work with children and families could make things worse, they went about work in a 'gentle' and 'short lived' manner with the intention of reducing this burden. This ambiguity, though reasonable may, arguably exacerbate the conditions that restrict participation and lead to a protectionist stance being adopted, so when practitioners determine that protection should be prioritised, additional barriers were created to children playing as full a role as possible (Winter, 2009). This was further demonstrated in Chapter Five when examining the restrictions placed around how information was shared, views presented, and participation inhibited.

Examination of this theme suggests that the Young People's Board's call for a more nuanced understanding of children's participation may be needed, as this could enable a fuller appreciation of the individual needs and capabilities of the child rather than reliance on the marker of age. This accords with the international understanding that, if used as a defining feature, age can be limiting (General

Comment 12, UNCRC). The analysis of the data suggests, however, that to actualise and uphold children's rights greater attention is needed to how maturity and understanding is conceptualised by practitioners and how it influences their work with people and informs interventions. The danger in not being reflective about, or accountable to, our thinking and understanding around age is that presumptions may continue and therefore establishing that children are not sufficiently able to contribute usefully to difficult decisions (Leeson, 2007), with the conditions that restrict participation continuing, unchallenged.

The Court Order

A second theme that I use to demonstrate how the data illuminated a tension in upholding children's rights relates to the absence of information that was given to young people about the consequences of their involvement and feedback about how their views were used within the court process. The findings suggest that assumptions that children and young people need to be protected from receiving too much information about the court process, or are incapable of understanding this outcome, are determinantal to their full participation. Within the findings discussed already, it has been established that children rarely receive explanations or information following their assessment meeting, despite their family court proceedings encompassing so many other factors and events. Court orders were made in all but three of the reviewed files, yet young people did not receive explanations around what this was, or the implications for their future childhood. This oversight is of importance when considering how children's rights are upheld within private law family proceedings. This is affirmed by a member of the Young People's Board:

"Yes, children do need to be told what a court order is, it is their right".

FJYPB workshop participants

Over the next few paragraphs, I use outliers from three files within the sample where there was some reference to court orders being discussed with young people to exemplify this overlooked area of practice. First, I detail several extracts from Tina's file who was involved in an explicit discussion about the appropriateness of making a court order with her family court advisor. The extracts

help to contextualise how Tina felt about an order being made and her justification in seeking that she was not directed to spend time with her parent. We can also see the practitioner's thought process and how they came to agree with Tina's views on the issue:

I discussed the implications of a Child Arrangements Order with Tina, and she scrunched her face up and shook her head. She explained she did not like the idea of being told what to do because she can choose to see Mr Adams whenever she likes.

At fifteen years old with some insight and her clear views, significant weight should be attributed to Tina's wishes and feelings. She is at a developmental stage where she is becoming more independent and testing her autonomy through making decisions, therefore dismissal of her views may feel like rejection or criticism at a time when she is especially sensitive, which could lead to diminished confidence and feelings of inferiority or shame.

I would suggest that in line with the No Order principle¹², a Child Arrangements Order that rigidly sets out a schedule of arrangements is neither necessary or proportionate for Tina. Instead, there should be a recital that she will be encouraged to join her siblings at weekends.

FCA writing on Tina's file, aged 15

In this example Tina was informed about what a court order was and how this would affect her, she was aware that it could place obligations on her and she did not wish for this. In having this conversation with Tina, it is suggested that she was considered an actor, and rights holder, in the here and now (Qvortrup, 1994). Further, she was seen as having a choice within the family court process. There is reference to developmentalist thought as the practitioner uses an age and stage model to rationalise the necessity of taking her views seriously, demonstrating that as discussed throughout this thesis, different approaches to childhood can be used to privilege some children's voices. The decision of the court aligned with her views and the recommendations of the practitioner; no order was made.

In most files, the informed conversation that was held with Tina did not occur. In four files out of the sample of 50, there was information to suggest this type of conversation took place (notably all of these young people were of teenage years).

¹² The 'no order principle' is a principle set out in Section 1 of the Children Act 1989. It asks the court to consider whether making an order will be better for the child or of benefit, as opposed to making no order at all.

This meant that for most children there is a commonly accepted reality that court orders are not discussed. In the further example of Emma, we see that, like Tina, she did not want a court order to be made, yet a decision was made against her wishes:

Emma met with Cafcass and was aware of previous court orders made for her, she said that they were unfair as they obligated her to spend time with her mother, she wanted to see her mother when she wanted and on her terms, she wants to be able to keep her distance if things are not going well between them, she feels no-one has contacted her to ask what she wants, feels her voice has been left out and this is unfair.

With respect to Emma spending time with her mother, she was clear that she does not wish for any arrangements to be prescribed by way of an Order. Whilst I am mindful of Emma's wishes, I am concerned that without guidance as to the minimum arrangement for her and her mother, the arrangements may not progress.

FCA writing on Emma's file, aged 13

Emma's views are expressed but they are not determinative, the practitioner has assessed that in this instance a court order is necessary. Having court decisions that go against her wishes appears an experience that Emma has repeatedly faced during her encounters with family justice. The file demonstrates how participatory practice does not require that children's views are acceded to but does require that their opinions are sought in the widest sense about decisions being made about their lives and the potential consequences. The writing on Emma's file identifies why gathering children's views on the making of court orders is an aspect of participatory practice and would provide important information for the family court.

Jae had a similar experience:

Having assessed Jae's wishes and feelings, I note that she does not want an Order, however given the parents conflict I am concerned that without an Order she may be prohibited from seeing her father should the mother wish to stop the father having contact. Therefore, I would recommend that the current Order is allowed to continue.

FCA writing on Jae's file, aged 13

Both Jae and Emma were living within an acrimonious family situation, they sought to influence the decisions of the court, which would have a bearing on their future childhood. Their views were listened to but were not considered influential, as the need to maintain their family relationships by way of court order took precedence. Neither Tina, Emma nor Jae received follow up information from Cafcass to assist

them in understanding how the decisions were made. This may be considered particularly pertinent for Emma and Jae whose views were departed from. There is no sense that family court advisors considered themselves accountable for the recommendations they made, or the decisions reached. It is acknowledged that practitioners and the court cannot always make decisions that align with children's views, but participative processes require that practitioners not only account for how they are heard within decision making but are accountable to the decisions that are made either in line with or against their wishes. Lundy (2018) asserts, for example, that transparency and accountability in the decision-making process is needed to attend to tokenistic forms of child participation.

I have used the three outliers to demonstrate how conversations around court orders are negotiated with young people and the issues that arise. Within the remaining sample there appeared no recognition that the making of a court order was a consequence to a child sharing their views and the participative process to which they were involved. This indicates that these conversations may not be taking place, and that children and young people do not receive information about the long-term effects of sharing their views, wishes and feelings within the family court proceedings. Though the files do not provide the reasons for this, the themes identified within the data thus far suggest that there appears to be a tension between the desire to limit the information that children receive about the court process, to protect them and the desire to ask children their views. When considering the topic of court orders with the Young People's Board, most members considered it a child's right to understand the outcome that the court had reached. One participant expressed that it was not necessarily an explanation of what a court order was, but that they receive 'reassurance' around the outcome of proceedings. The participant below highlights the way in which children are affected by the making of these orders:

"Since the court order is the thing that governs parts of their life, they have more right to know what it is than anyone else involved. To deny this could damage them as they would have no idea as to why they have to do things that they may not want to do".

FJYPB workshop participants

For this group of young people, receiving feedback about how their words were used and the outcome of court decisions, was intrinsically linked to their rights being upheld within private law family court proceedings. It was advocated that children do not understand the rights they hold when their family comes to court. They advanced that providing children with information about their rights was a key role of Cafcass:

“Children and young people should all know their rights in proceedings which determine their future”.

FJYPB workshop participant

The findings suggest that when balancing children’s rights within their court proceedings, protectionist attitudes are often seen to prevail. This is despite children’s participation rights being interdependent and indivisible from other rights, such as protection from harm and provision of resources (Verhellen, 2015). Currently, it appears that practitioners may be setting the balance too far in the direction of protecting children from distress and harm, thereby not allowing them to be as involved in the enquiry process as possible. Further, the presumptions held by practitioners about children and young people’s age and capabilities to manage information around the court process appear influential. There is a focus on understanding children through chronological age and expected norms, rather than maturity or the individual characteristics and experiences of the person involved. Though many files demonstrated that practitioners prioritise listening to children, their ability to see them through a lens that is ‘heterogenous, complex and emergent’ (Prout, 2005:2) is yet to be developed. The findings indicate that there remain opportunities to develop more nuanced ways of seeing and understanding children and their journey through family court proceedings and that fundamental to this is practitioners being accountable for the recommendation that they make, whether in line with or against their wishes.

The Best Interest Principle and Consequences for Participation

The theme explored in this section turns attention to the best interest principle and how this is presented within the data, particularly exploring how it interacts with children’s participation rights. As was discussed when reviewing the literature,

those working within family justice are directed by statute to give attention to the welfare of children, with the best interest principle first emerging in Article 3 of the UNCRC before being enshrined within UK law within the Children Act 1989. Today, the terms 'paramountcy principle', 'welfare principle' and 'best interest' are often used interchangeably (Fortin, 2009), referring to the standard which must be applied throughout decision making processes involving children and young people. There is, however, a significant difference between the paramountcy principle and Article 3 of the UNCRC. The paramountcy principle requires that the child's welfare must be the court's primary consideration when making decisions for children, with judicial conclusions attending to the range of factors listed in the welfare checklist (see Figure 2) to substantiate decision making. Comparatively, Article 3 of the UNCRC, is about children's rights and how they apply both theoretically and practically to actions concerning children (Wood, 2020). It encompasses all rights provided for within the Convention, with the best interest of the child coined to be 'a right, a principle and a rule of procedure' (see General Comment No. 14 2013). The analysis over the next few pages is concentrated on the latter, examining how this guiding principle of the UNCRC is established in practice.

The data demonstrated circumstances where the views expressed by children contended with family court advisor's views of their best interest. On several files, it was evident from the practitioners recording what their rationale was for only partially or completely disagreeing with what they said. An example is set out below:

Image 8 Practice Example

Within case planning FCA states: 'Xavier is nearly 16 years old and wants to spend time with his father outside of the centre. Significant weight needs to be given to his wish and how this can be safely promoted to prevent him making unsafe arrangements'.

Further FCA reflections within file: 'This was a professionally uncomfortable assessment for me, due to the high risk of domestic abuse and the findings made against the father, which he continues to deny some years later. However, I needed to consider Xavier's age and what safe arrangements can be made to prevent him entering secret meetings with his father, that would not be in his best interests. My recommendation, for an increase in the time that Xavier can spend with his father, limited to the day only'.

Court decisions: The court order recognised the impact on Xavier of not being able to make

decisions that were fully aligned with his views (although did agree that the time they spent together should move from the contact centre). The court also noted the exceptionality of making an order for a young person of 16 but detailing that the risk of domestic abuse made it necessary.

Post Hearing communication: The court directed the family court advisor to meet Xavier to explain why there were limits set around the time he could spend with his father.

The practitioner describes this assessment as ‘professionally uncomfortable’; the discomfort appears to stem from the task faced when balancing the young person’s right to self-determination with protection from harm. This tension is acknowledged within the UNCRC, with the best interest principle being a general principle requiring adults to do what is best for children. Though Xavier wished to see his father, regularly without restriction, domestic abuse was a risk factor for the family. The practitioner’s rationale therefore prioritised his safety, recommending an outcome that did not fully align with his views. Positively for Xavier, he had the opportunity to meet again with his family court advisor who informed him about the decision, providing an explanation as to why his views were not fully determinative. It is acknowledged that these situations can be difficult for practitioners to navigate. The practitioner was appreciative of the young person’s autonomy and capacity for influence and action when attempting to reconcile his right to protection with right to participation. Xavier’s agency was not considered innately positive (Tisdall & Punch, 2012) and we can see the relationality of agency (Esser, 2016), both in how it was formed within the conversation about his views and limited within the structure of the family court.

Eekelaar (1992) suggests that problems exist when decisions are made based on protective decisions and under the guise of the best interest principle. He coined the term ‘coercive paternalism’ to describe this approach, asserting that, ‘no society will have begun to perceive its children as rights holders until adults’ attitudes and social structures are seriously adjusted towards making it possible for children to express views, and towards addressing them with respect’ (Eekelaar, 1992:228). His criticism can be paraphrased as being that children’s views are easily overlooked and their ability to make choices in their own lives ignored within

a system that privileges their best interest with the potential to force outcomes that they do not want, under the guise of protecting their rights. This study uncovered how children's participation in decision making was contingent and dependent on how family court advisors interpreted and understood their rights and balanced them within the structure of the family court. Participation occurs within a context where there is little attention or acknowledgement given to institutional or adult power and rights are operating within a heavily constrained environment, which appears to lack accountability to children.

Primary and Secondary Decisions

The issue of power and agency arose more concretely when the data were examined to compare areas where participation was maintained and areas where it was disregarded, one example of this was discussed when considering the findings around court orders. Another example is provided here and relates to a pattern, which I represent as *primary* and *secondary* decisions. Data analysis established that children were mostly supported to express their views on primary decisions that the court was being asked to make; most frequently which parent/carer they wanted to live with and how they wished to maintain their relationship with the other parent/carer. There was often reference to 'direct'¹³ and 'indirect'¹⁴ contact when considering how a relationship would be supported with the family member the child did not live with. However, whilst they were almost always consulted on direct forms of contact (i.e. being encouraged to provide their views as to whether they wished to see their non-resident parent; if so, where and how frequently), they were less likely to be consulted on secondary decisions, and their views around indirect contact were less routinely sought.

The review of children's files established that there was a focus on gaining their views on primary decisions, yet when it came to secondary decisions, absent these recommendations being influenced by children's own views, it appeared that

¹³ Such as face to face family time, either supervised or unsupervised, and other forms of communication such as phone calls, video calls etc.

¹⁴ Such as the parent/carer sending letters, cards, gifts to the child

practitioners applied their own best interest rationale. This is exemplified in Eddie's file:

Eddie told his FCA *"there are a ton of different reasons why I don't want to see my dad, but haven't got time to explain them all, I just don't want to go"*. Cafcass recommended that in line with his wishes, spending time with his father was not in line with his best interests. However, it was recommended, and the court decided, that Eddie would receive a card from his father on Christmas and on his birthday. I cannot see from the file that this was discussed with Eddie.

The recording in the court order anticipates that the adults making decisions for him recognised that he may not wish to receive this communication, and so it was decided that letters would be kept and stored by his mother so that he can access them in the future. Eddie's views on this proposal are not known.

Researcher notes on Eddie's file aged 13

When practitioners make these secondary recommendations, it appeared to me that they were attending to the rights of children to have their family relationships supported, even if it was not what they wanted now. For Eddie, it seemed that there was a need to strike the balance between upholding his right to self-determination with maintaining his paternal relationship in some form, thus protecting his right to family life. This exemplifies the duality of the role of family court advisor, who are responsible for informing the court of the child's wishes whilst also advising on best interests. However, why children's views were not considered important on these issues was unclear. Those writing about children's involvement in family justice suggest that the 'welfare imperative' obligates decision making based on the child's best interests, regardless of what they say (Fortin, 2009). This may go some way to explaining why Eddie's practitioner considered it necessary to recommend that he had some form of relationship with his father, despite not appearing to have established his view on indirect contact.

The research finding around primary and secondary decisions casts doubt on the mechanisms that are in place to enable children and young people to fully shape the decisions made for them. The findings of the Harm Panel Report (Hunter et al., 2020) criticised this approach to decision making, asserting that in circumstances where domestic abuse was reported within private law family proceedings, Cafcass focused on maintaining relationships with abusive parents. It was found that some

form of contact was likely to be ordered, despite children's views. Furthermore, taking seriously the views of children within a framework of welfare, a paradigm that has set perspectives about childhood - rather than one where 'rights' are situated within a model of agency - was a challenge established by James, James & McNamee (2004), 20 years ago.

The findings of this study suggest that challenges continue to exist in establishing a culture whereby recognising children and young people's collaboration is accepted as favourable to coming to family solutions. The finding implies that there are times that children's rights are not fully committed to, their autonomy and capacity to engage in decision making was overlooked, this is despite there being so many examples of children and young people's agentic capabilities within the sample.

Children's agency

Klocker (2007) provides a way of conceptualising agency that is helpful when considering how children's expressions are curated within the family court process. They assert that agency should be seen as a continuum and distinguishes between 'thin and thick agency'. In discussion of Klocker's typology, Abebe (2019) denotes that 'thick' agency refers to having the liberty to act within a broad range of choices and actions, for example being able to make choices that affect present and future, such as what school or activities to attend, what partner to marry. Comparatively, 'thin' agency refers to children's everyday decisions and actions within restrictive contexts with limited opportunities. Practitioners, therefore, can be seen to act as a 'thickener' of children's agency when they act in a way that upholds their rights of participation. This theorisation is relevant to understanding children's agency within the remit of family court proceedings, as it helps to build on the conceptualisations of agency that we have seen already. So far, the findings have suggested that participatory practice is affected by the relationships children hold with practitioners, with their agency being both produced and contested in relationships. We have seen that expressions of agency are not always unproblematic, and the findings demonstrate how the agentic capacity and self-determination of some is upheld for some whilst silenced for others.

This notion is demonstrated further by illuminating some of the ways in which children's agency was recorded within children's files and how practitioners responded. In the example below, we see a young person who is expressing her views on seeing her father, her resistance and reasoning in seeking to reject a relationship with him is palpable:

"It's my choice if I want to see him but I don't want to see him. He threw acid in a woman's face". Grace said that the last time she saw her father she was aged around 4 or 5, her mother had to bribe her to meet him.

FCA writing on Grace's file, aged 10

When reviewing this file, I noted that there were actions taken by the practitioner to indicate that Grace's participation in decision making was taken seriously. It was evident from the file that they had discussed all aspects of the application with Grace (including indirect contact), she was therefore well informed. The practitioner ensured that her words stood out clearly within the report to court and Grace was helped to write a letter to the judge, she was therefore well represented. Within the file, the practitioner commented upon the strength of feeling held by Grace, suggesting that her views should be 'respected given her age and understanding', her perceived maturity was therefore reinforced, and it appeared as though the practitioner attempted to 'thicken' Grace's agency.

This centering of a young person's self-determination is further demonstrated in the extracts below, in the way that practitioners wrote about children and young people:

I consider this to be Bella's own wish. She is a bright, able and confident child, and I feel that if she did not want to move, she would be clear of this wish, particularly given the significant relationship she has with her father.

FCA writing on Bella's file aged 10

I found Molly to be mature, strong minded, socially aware and reasoned in her responses she told me that she had been a lot younger when matters had been before the court previously and she wants to have her voice heard properly this time.

FCA writing on Molly's file aged 15

In these extracts we gain a sense of how children's right to be heard was perceived and their role in decision making supported, through the way practitioners

articulated their views. They placed a positive obligation on those making decisions to take seriously their views, and their agency was strengthened by practitioners giving credence to their expressed views. As we saw for Grace, Klocker's (2007) typology is helpful in identifying when practitioners attempt to 'thicken' children and young people's agency, although the writing around Molly's competence hints at the conditionality of child participation as has been embodied within Article 12 of the UNCRC within the principle of age and maturity. This is a reminder that as well as being expanded, agency can be constrained through restrictive contexts. A 'thinner' of children's agency is found within the structures, contexts and relationships of family justice which is premised on a culture where children's competence and autonomy tests traditionally based attitudes toward children, childhood and family law (Tisdall & Morrison, 2012). This is particularly problematic for younger children who have less say in how their everyday lives are managed (Lansdown, 2005) and, as seen in this study, are less likely to be viewed the agentic and participating child, accorded with the same opportunities as their older peers.

A final extract is used below from Jessica's file to demonstrate the lasting bond between structure and agency (Giddens, 1984), a reminder that children's views do not always lead to the result that they want. The example demonstrates how the mechanisms in place to enable children to fully exercise their autonomy often appear missing, having consequences for how their rights are upheld:

During the assessment meeting Jessica and her siblings were involved in the activity of writing a letter for the family court, one of the children within the sibling group did not wish for their parents to see the letter, which included their views on the decisions that the court was being asked to make and their feelings on the issue of their parents' separation, particularly the belief that their mother's current partner had been the cause of the family separation. The court decided that the letter was written, and that their parents needed to see it.

Researcher reflections on Jessica's file, aged 7

The writing on Jessica's file reflects that expressing agency has the potential to be problematic, with the parents' rights to information over-riding the child's right to privacy. This reflects the difficulties inherent in upholding children's rights within family justice as there are competing rights at play. Morrison et al., (2019) suggest

that young people may be powerful in their interactions with social workers, but relatively powerless in bringing about change to their lives. They offer containment as an alternative approach to respond to children's expressions, requiring that we hold space for agency to be communicated, treating their views sympathetically whilst accounting for the fact that there is not sufficient liberty for their actions to achieve change.

For Jessica's sibling, there was space for them to request for their information to be kept private, and likely good reason for sharing it. Their agentic capacity, to have their views and experiences heard was enabled but autonomy restricted when it came to decisions about what would happen with their views, once spoken. Tisdall and Punch (2012) remind us, that agency may not be inherently positive and that children should be able to express their agentic capability or withhold it, akin to making decisions over participation. What was important for this sibling group, was that they were properly informed at the outset about the limits to confidentiality. The example demonstrates how adults may give the 'illusion of empowering children' while concealing the ways in which they are excluded (Lyttleton-Smith et al., 2023:2). This indicates that children's participation in their family court proceedings is shaped by adult attitudes and processes, with the idea that children are subjects with agency challenging the welfare paradigm (Hunter, 2007). Those working in child protection social work are only too aware of the challenges that arise when applying the concept of agency in practice (Morrison et al., 2019) and this example provides again an opportunity to reflect on the role of accountability when there is a collision between rights and practice.

Overall, when considering how children's rights are upheld in private law family proceedings a workshop participant suggested:

"Some parts of UN convention are taken into account but not fully – due to lack of closure, many things left unsaid that are crucial".

FJYPB workshop participant

The findings suggest that children's participation experiences are troubled by the best interest principle that is well established within family justice. This structure is founded in adult attitudes and processes that are yet to fully redress the balance of

power with children and young people to make room for their meaningful involvement. Opportunities to take part can be given or taken away, removed or restricted and there is yet to be an understanding of the spatial, intergenerational and relational aspects of children's participation (Horgan, et al., 2017). As highlighted by the member of the Young People's Board, some aspects of children's rights are considered, but not fully, and it is the salient ways in which their rights are overlooked that is likely to require cultural change.

Children's Participation Centred within Relationships with Family Court Advisors

Before turning to the concluding chapter of this study, this section considers findings that reveal the insights gained into Cafcass' practice of working directly with children and young people and the development of a relationship-based practice model. The findings from the workshop with members of the Young People's Board powerfully identified the care and attention to rights-focused practice they seek on behalf of children and young people involved in private law proceedings. They identified that hearing and listening to children was not enough, and called for them to be taken seriously, through having opportunities for meaningful participation in the family court process. They outlined what best practice for children and young people was from a perspective that privileged a rights-focused way of working for children. Within the practice observed in the sample, there was a commonality with the Young People's Board call for children's views to be heard, and the practice of seeking children's views and reporting on them underpinning the work of family court advisors. The files established that, broadly, children and young people were listened to, and their words influenced Cafcass recommendations.

Yet, the review of children's files also identified many missed opportunities for young people to receive key information at important stages and for practitioners involved in family justice to be committed to transparency and accountability when it came to their participation. This questions the degree to which they were considered active participants. There were times that their involvement in decisions was curtailed to the areas defined by the family court advisor, establishing an imbalance of power. Furthermore, the views of older children were privileged and

the ability of younger children to make reasonable decisions was more frequently questioned, with increasing age being seen to positively influence greater participatory opportunities. In these scenarios, practitioners were having to resolve and respond to difficult family situations; they were working within a system that does not afford them time to build relationships with children and an environment fraught with conflicting imperatives. For family court advisors, knowing the best way to approach their work with children, how much information to share, and upon which issues to consult is a challenge of the work.

Relationship based practice

The data gathered through the workshop with members of the Young People's Board (set out in Image 7 in Chapter Five) provided information on the importance of the relationship between child and practitioner. They valued family court advisors who listened, were truthful, good communicators, patient, kind and reliable. They wanted practitioners who brought themselves to practice, were relatable, would explain things carefully, keep them updated and provide them with explanations around what was said on their behalf. What they did and how they did it was important, and the words of participants powerfully describe the services that they believe are beneficial for children. Exploring young people's encounters with Cafcass through the review of children's files provided a further way of understanding the patterns of communication and processes of relationship building. Though this study did not research specifically the skills of practitioners as they communicate with children, there are findings around how professional relationships with children are enacted that warrants comment, to deepen our understanding of how practice takes place and the improvements to quality that could be made.

The call from the Young People's Board for practitioners to be empathetic and use the self in practice resonates with the work of Biestek (1957), an early commentator writing about the casework relationship. The quality and effectiveness of social work relationships has been continually written about since (see Trevithick, 2003; Howe 2008; Ruch; 2005) and there is an appreciation that social work is founded on good interpersonal relationships with users of services. Cafcass have developed a practice framework built on the concept of relationship-

based practice as detailed within the Together with Children and Families Framework, which sets out the importance of trusting relationships, listening, understanding, clear reasoning, respect, and integrity for practice (Cafcass, 2021). The model of practice was described by Ofsted as leading to ‘palpable cultural change across the workforce’ in the most recent inspection, who identified that in line with the associated practice guidance, changes in practice meant that more children were receiving opportunities for introductory communication when they were allocated a family court advisor and ending communication when their work with Cafcass or family proceedings concluded (Ofsted, 2024:8).

At the time that this review was completed, a practice model was in effect that was premised on children having a single point of communication with their family court advisor – at the assessment meeting - during the course of their family court proceedings. Although some children within the sample received additional points of contact, this practice appeared influenced by the approach of a practitioner or court direction. It is positive that children are having additional opportunities for contact, through templated welcome and ending letters. Making this a practice priority underpinned by organisational policy appears to have been an effective way of changing practice. Furthermore, the Together Framework brings about an expectation that children receive an explanation of the role of the family court advisor within their welcome letter and information about how to provide feedback to Cafcass.

Considering the findings of this study, the Framework is well-timed and provides a much needed refocus on the communication and information that children need during their family court proceedings. However, it does not go as far as to provide that children and young people receive the types of information that underpin participatory practice, discussed throughout this chapter and the one preceding. Nor does it address the missed opportunities for children to be provided with important information about the full implications of sharing their views within the private law family court proceedings, nor address the challenge that children’s opportunities to share their views remain limited. Furthermore, as has been discussed in this chapter, there are deeper theoretical and cultural interpretations of children, that have implications for the way that they are heard and understood

within court proceedings, that also need to be addressed. This thesis argues that there is room to develop deeper accountability within the practice Framework to ensure that there is a conducive environment for children's participation.

Therefore, whilst the Framework can be seen as a positive move toward participatory practice, and an approach that recognises children as active agents within parental separation and divorce, it is a starting point. Perhaps it would be better understood as an important building block to approaching children's engagement in a more meaningful way and an opportunity to establish a way of working that is centred around their right to information, participation, freedom of expression and other fundamental rights. This research suggests that to effectively move along the continuum toward participatory practice, avoiding tokenism and addressing outdated ways of thinking about children, there is scope to develop the Framework further, improving the communicative skills of family court advisors and, thus, children's experiences along the way.

Conclusion

Over the last three chapters, I have set out the key findings of this study, beginning in Chapter Four with an overview of the descriptive patterns within the data, which set out the quantitative findings alongside the responses that were collated from my research activity with the Young People's Board. In Chapter Five, I examined what children's participation looks like in private family law, using a practice exemplar to contextualise the findings. Then, focusing on three key themes, I explored both routine and exceptions in practice. Finally, in this chapter I have discussed what was revealed within the files about how practitioners respond to children's rights, particularly within the framing of vulnerability and primacy of protection, recognising how deeply entwined these concepts are with children's exercise of agency. I have also examined how the backdrop of family justice, where welfare and best interest are foundational, contests participation practice.

Throughout the finding's chapters, the theories and constructions of childhood have been referenced, with extracts from children's files and the responses of the Young People's Board being used to examine how children are seen as agentic social actors and rights-holders. There have also been times that articulations of

children's immaturity have been observed, appearing to be relied upon to restrict participation. Further, a linear and uniform approach to children's development has been presented in files. The findings demonstrate some of the challenges that arise within the discourse of children's rights, and although the final analysis offered in this chapter suggests that much is being done by Cafcass to ensure that practitioners respond to children's participation, it is recognised that balancing rights is not straightforward within the family court context.

The findings of this study dispel the idea that children lack the capability to take part in their family court proceedings in a full participatory way, suggesting instead that attention must be drawn to accounting for the agency of children and young people. This analysis draws on the childhood studies literature reviewed in Chapter Two (see Jenks, 1992; Mayall, 2000; James & James, 2004), identifying that greater understanding is needed of how vulnerability, agency and participation are socially constructed (for comment see Klocker, 2007; Tisdall & Punch, 2012; Bordonaro & Payne, 2012) by family court advisors in their work with children. The way that concepts such as age and the principle of protection are framed have consequences for practice (Sutterlüty & Tisdall, 2019). If vulnerability is homogenised, in an uncritical manner, we risk not only disempowering children and young people but also introducing paternalistic approaches to our work. This analysis calls for a greater understanding of relational approaches to children's agency, recognising that a child who has protection needs is not only vulnerable, but agentic regardless of age, with the capability to shape the world around them. Towards this end, adults have a role in ensuring that children's potential to act and take part in family court proceedings is fully participatory and is underpinned by a children's rights approach to practice.

In the concluding chapter, I suggest that a more collaborative approach could be taken, where family court advisors are invited to be accountable to children and young people within their participatory practice so that the opportunities provided to children are meaningful. It is suggested that in doing so, whilst we may not always find solutions that equate to the changes that they wish for their lives we can be confident that the conditions provided attend to collective participation, underpinned by children's fundamental rights.

Chapter Seven: Conclusion

Introduction

To conclude this thesis, I want to return briefly to the aim and purpose of this study which was to respond to the gap in knowledge around children and young people of divorced and separated parents who encounter family justice. There has been a focus on researching and understanding the needs of children involved in public law (when the local authority intervenes to safeguard children at risk of abuse and neglect), rather than private law family proceedings (where parents/carers bring cases to court to regarding the upbringing of children), which has prevented us from fully appreciating the unique experiences of these young people (Rogers et al., 2015). This is despite children from within these families making up more than three quarters of all cases in the family courts (MoJ, 2024). This thesis offers new evidence about the nature of children's experiences when their family comes to court and makes suggestions about how we can move toward practice that is more participatory.

The mixed methods study undertook analysis of Cafcass files alongside a workshop with children and young people with experience of family justice to investigate participatory practice. The study revealed how children are involved, and their views, wishes and feelings operationalised within a restricted legal environment, as well as illuminating how their agency is framed by adults working within the system. It has generated ideas about how children are seen within the context of family separation, reflecting views held within society and social work practice. The study has principally highlighted the complexity that exists between participation and protective practice, and the impact this has upon the meaningful engagement of children and young people within family justice.

The final chapter of this thesis now summarises the findings of the research and is organised into six sections for discussion. I begin by returning to the research questions in the first, second and third section of this chapter, discussing the research findings and the analytic themes that emerged. Consideration is then given to the substantive insights that have been gained through the study, when discussing the implications for Cafcass and for family justice within the fourth and

fifth section. The final section acknowledges the challenges and limitations of this research, and discusses ideas for future development, to further improve practice and advance our understanding.

Research Questions and Findings

This section discusses the research questions which guided the study, considering how successfully they have been addressed and the implications of the research findings and analysis.

How do Children and Young People take Part in Private Law Family Proceedings?

The analysis established that when the court directs Cafcass to complete a Section 7 Report, there are opportunities afforded to children and young people to take part in their proceedings by sharing their views, wishes and feelings with a family court advisor. Some children took part by writing or drawing pictures; others spoke to practitioners about their views. Children are reliant, however, on practitioners to represent what they say. Having the opportunity to meet a family court judge was not routinely observed in practice files, nor were there avenues for children to receive support throughout the proceedings, either through ongoing communication about the family court process or receiving feedback about the court decision. Their involvement beyond the Cafcass report was therefore minimal.

It was established that, generally, the children within the sample worked with one practitioner and low levels of staff change were noted, which is an important finding when thinking about how relationships are established. The connection that children have with their family court advisor was seen as important by members of the Young People's Board, who highlighted the responsibility that practitioners have to ensure children are involved and have their rights upheld. Children are required to enter relationships with family court advisors, whose work with them is based on short, brief encounters. Issues were identified with how young people are seen and understood by practitioners, who frequently made assumptions about their capacity to participate meaningfully based on age, and whose attempts to shield children from the reality of the court process had, according to the Young

People's Board, the potential to cause greater confusion. There was a complex interaction between agency and vulnerability, which was unspoken and unattended to, suggesting a lack of acknowledgement of this tension. These are important areas of focus for development if children's experiences are to change and renewed attention is given to the three arches of rights: provision, protection and participation.

The study identified that there is some accountability taken by Cafcass to address this area of practice. Their Together with Children and Families Framework (2021) acknowledges the importance of relationship-based practice within the culture of family justice. In the context of the guidance, they seek to improve the communication that children receive about their proceedings and reduce delays for children when their family comes to court. Furthermore, the Pathfinder Courts Pilot, introduced around the same time as this study began, reflects wider reform within family justice which aims to improve how children are listened to and their views considered when decisions are made about their futures. The files analysed within this study pre-date these changes; however, both initiatives reflect a critical development in that greater attention is now being given to keeping young people informed throughout their journey in family court proceedings and to improving their participatory experiences.

This research, however, identified that alongside practice frameworks and initiatives within the courts, practitioners must be helped to explore how they conceptualise and build an understanding of children whose parents separate, and how childhoods may be affected by their interaction with the family justice system. Although a framework concentrating on relationship-based practice is useful, an important element of this should concentrate specifically on how effective relationships are established based on brief social work encounters. Additionally, initiatives that seek to increase children's involvement must pay attention to how decisions are made about which children are included and when. Until further change occurs, this study identifies that young people's involvement will continue to be based on the premise of some children having one-off opportunities to talk to an adult about their views, wishes and feelings, reducing the concept of participation to their involvement in conversation (Huseby-Lie et al., 2024),

reflecting minimal levels of engagement, which may even be considered tokenistic (Hart, 1992).

The findings suggest that there was a danger that children involved in private law family proceedings were seen as a homogenous group, rather than practitioners adopting an approach that delineates their experiences and capabilities when enabling participation, representation, and agency. This was particularly relevant for groups of children who were at particular risk of being overlooked, including children with prior experience of family justice, those with disabilities and those whose first language was not English. The data established that long running proceedings, the multiple expectations on family court advisors, and high demand were likely to get in the way of this approach to practice (as seen in Jones, 2023, Diaz, 2020). Working within the context of family justice, where adult systems and attitudes can inhibit practitioners from meaningfully involving children and young people, was also a challenge. Further, despite analysis suggesting that for many children the views they expressed aligned with some of the decisions made for them, the data found that this process failed to adequately respond to children's desire to have more opportunities to participate, to be heard and affect outcomes (NSPCC, 2024).

To what Degree does Involvement with Cafcass Allow For Meaningful Participation?

It is important to return to a point that was set out at the introduction of this study, that the limited research within this field suggests that a marker of child participation within private law family proceedings is whether children and young people meet with Cafcass during the reporting process (see Cusworth et al., 2024). Yet, this mechanism was not designed with children's active participation in mind. The responsibility placed on Cafcass to report under Section 7 of the Children Act 1989 is the court's response to seeking welfare information about a child so that they can make decisions.

Though the term 'participation' is not mentioned explicitly within Article 12, it is referred to within General Comment No. 12 on the CRC (2009), which provides practical guidance for State parties to ensure the full and effective implementation

of the child's right to be heard. Several key factors are emphasised, these include respectful relationships, dialogue and reciprocal information, that children's views are taken into account and shape outcomes, and that they receive feedback (the nine basic requirements are set out in appendix 10). The study established that, in line with these guiding principles, there were some basic tenets of participation practice evident in many files. Examples of this were revealed in Chapter Five, which established that it was routine practice for practitioners to share information about their role and the purpose of meeting with children. It was evident that practitioners gave attention to the most appropriate way to help them understand their work, seeking to help young people communicate their views, wishes and feelings to court. Further, building rapport through 'tuning in' to children and young people (Lefevre, 2018) was seen within the data, with family court advisors gaining information about the child's world, their school life, their hobbies and friends in addition to the directive work required for the assessment. Though the exact details of these exchanges were difficult to capture through the case recordings, it was evident that discussions of this nature were happening.

The research demonstrated that whilst these interactions were brief, for most children, they were sufficient to ascertain their views at that time. Many of their views were considered and shaped outcomes. What was not aligned with a participatory approach, however, was the finding that children did not have the opportunity to change their mind or provide their updated views about their family situation through ongoing communication with their family court advisor or involvement in the court process. Young people consequently had little opportunity to influence decision making after the assessment meeting, and avenues to receive feedback or the information about outcomes were absent. The data established that barriers to this were not simply time and resources alone, but were rooted within how aspects of children were conceptualised and their voice, agency and rights understood.

Since the research activity, Cafcass practice has developed and there is a renewed focus on increasing opportunities for children to take part. This direction of travel could lead to increased opportunities for participation, but with no consistent organisational system or process of conceptualising participation, there

is a concern that elements of child-centred practice will remain missing. It is notable that though the Cafcass Strategic Plan 2023-2026 identifies that 'children in private law proceedings typically experience longer and more adversarial proceedings with more limited opportunity for participation in the decision-making process' and aims to redress this through its practice priorities, it does not define what participation looks like or how this may be achieved (Cafcass, 2023:24).

This study was located within the traditional model of private law practice which was in place at the time of this review, known as the Child Arrangements Programme. The data was collated from files where a court report had been directed because risk issues required the court to consider the safety of children when making decisions. There are two key differences under the pilot model. Firstly, a report is considered much earlier in proceedings and secondly, reports are completed with all families, regardless of the level or absence of risk (for a comparison of the models, see appendix 9). There is the potential for a wider remit of children and young people to be consulted within the reporting process, potentially increasing opportunities for participation. However, decisions about if and how to engage children and young people will be left to Cafcass. This suggests that the issues identified within Chapter Six relating to developmentalism and prioritising protection over participation, alongside the practice examples of how secondary decisions are made for children without input, may mean that without a clear and defined commitment to participatory practice, problems will remain. This is even more likely given that the findings of this study suggest only a partial understanding and acceptance of what participation means and its level of priority within the UNCRC.

There is no right way to do participation, and the complex situations that children encounter within private law family proceedings have been illuminated through this research. It is suggested, however, that a more conducive environment for the meaningful involvement of children and young people may be enabled if there is a focus on the conditions that attend to their collective participation, such as adopting a relational view of children, their participation and agency, maintaining their fundamental rights equally, and establishing accountability as a cornerstone of practice. I suggest that it is necessary, therefore, that their involvement is not left to

chance, or that assumptions around the harms associated with participation are allowed to limit opportunities.

What are the Strengths and Barriers to Participation?

It was clear from the research activity with members of the Young People's Board that they believe working with children and young people in a participative way is the correct approach for those involved in family justice. Their own experiences of the process enabled them to reflect on the complexities of fully involving children and young people and they rightfully highlighted that this is not only a way of working, but a way of embodying a rights approach. The Young People's Board appear to be a valued part of Cafcass' governance structure, who had a consultative role in the organisation's design of the Together with Children and Families Practice Framework. There is the will, therefore, on behalf of the organisation to listen to and improve children's experiences of family justice, with Cafcass Strategic Plan 2023-2026 setting out their aim to deliver an 'exceptional experience' for every child who needs their help in proceedings' (Cafcass, 2023:3).

The study identified that engaging with children's wishes and feelings is a practice priority and there was a discernible correlation within the sample that their views were considered within the recommendations of family court advisors. There were important tenets of relational practice and some examples that went beyond routine practice, demonstrating a desire to work in a way that moves beyond the 'external' or 'outer world' matters (Schofield, 1998) that can preoccupy practitioners, such as completing paperwork, writing reports or meeting with adults, toward being with children in the process, representing them clearly, providing information and explanations. This thesis has recognised these as important building blocks which could aid practice more along the continuum to participation.

When the findings from children's files were correlated with the views on participation from the Young People's Board and models for participation (see Hart, 1992; Shier 2001; Lundy, 2007), participation in many files could be characterised as at a most basic or primary level, and it was not characteristic of the nature or level of participation that one might expect for children involved in court proceedings. Further, there was a disconnect between what was cited within files

as participation, or the active involvement of children, and what was envisioned within the UN Convention. Barriers to young people's meaningful participation appeared to have both practical and theoretical elements, as discussed below.

My closeness to the research topic, meant that I was not naive to the challenges faced by practitioners. Though one might favour suggesting that Cafcass increase children's opportunities to meet with their family court advisor, such a proposal would fail to appreciate the resource scarcity, complex area of social work practice, and the demand on both Cafcass and the courts in the arena of private family law. Further, it would not necessarily lead to greater opportunities for children and young people to take part. Both Cafcass and the family justice system are already working hard to improve the quality of private law resolutions and involving children amidst the current level of demand. Despite this, the research suggests that without a specific participation strategy that is evidence based, measurable and founded in a children's rights framework, participation is left somewhat to chance.

Continuing to mistake listening to children alone as enough takes too lightly the responsibility on practitioners to recognise the full scope and purpose of children and young people's right to participate in issues which affect their lives (see Munro 2001, Lundy, 2007, Bessell, 2011, Kennan et al., 2018). There is a need to move beyond outdated understandings of children's agency and capacity to contribute toward an approach whereby they are helped to understand the process and are informed about outcomes, thus distinguishing meaningful participation from tokenistic, manipulative, or decorative forms of non-participation (Hart,1992). This change is not as straightforward as spending more time with children, but by progressing how we think and understand young people within family justice.

Barriers to meaningful participation were rooted in paternalistic attitudes that failed to recognise that involving children fully is not only a protective strategy but one that attempts to distribute power more evenly with children. Seeing young people as only vulnerable or using their age and perceived immaturity to make protective decisions, failed to recognise how their right to participation and protection exist alongside each other. This is a problematic finding and fails to acknowledge that within social work practice we need to think carefully about how we conceptualise

childhood, recognising that young people should be supported in developing their autonomy, through relationships and capacity building (Tisdall, 2017) rather than the limiting of opportunities. This was particularly relevant when children's views conflict with the practitioner's assessment of what was best for them. This research recognises that within private law practice, practitioners must make decisions that do not always align with what children say. It is suggested that this type of action can be reconciled with a child-focused approach to practice if we ensure that the opportunities we provide, properly attend to the decisions being made about their lives and are accountable to meaningful participation practice.

Insights for Practice and Policy

Having reviewed the research questions and the key research findings, the next two sections give attention to the understanding this study has gained into children and young people's experiences of private family law proceedings. The insights are broken down into two sections to concentrate separately on the suggestions for Cafcass and those for the wider family justice sector.

Implications for Cafcass

This research establishes that there is scope to develop the individual practice of practitioners and the collective orientation of Cafcass to provide that children and young people's participation rights are enacted more readily and systemically in practice. This may require a comprehensive programme of action situated within a framework of participation, which does not leave meaningful engagement to chance or requires children and young people to fit into adult practices, but further expands the organisation's commitment to a rights-based approach. This would require training and resources for practitioners to ensure practice is consistently child focused. Thus, there are both structural conditions, attributable to the way Cafcass frames the practice of child participation, and relational conditions, created by family court advisors within their work with children and families, that play a key role shaping children's experiences.

It was noteworthy that despite the attempts made by Cafcass to develop a practice model that improves children and young people's experiences of family court proceedings, there is limited reference to a framework of their involvement or

participation, reflecting that as a concept, child participation is often undefined and lacking as a theoretical premise (Horgan et al., 2017). There is reference to generic elements of participatory practice such as listening to the views of children but defining what this means in practice is absent. The findings of this study suggest that this commonsense understanding of participation is too simplistic. This study has revealed that facilitating meaningful opportunities for young people to take part and remain involved is not straightforward within the realm of family justice.

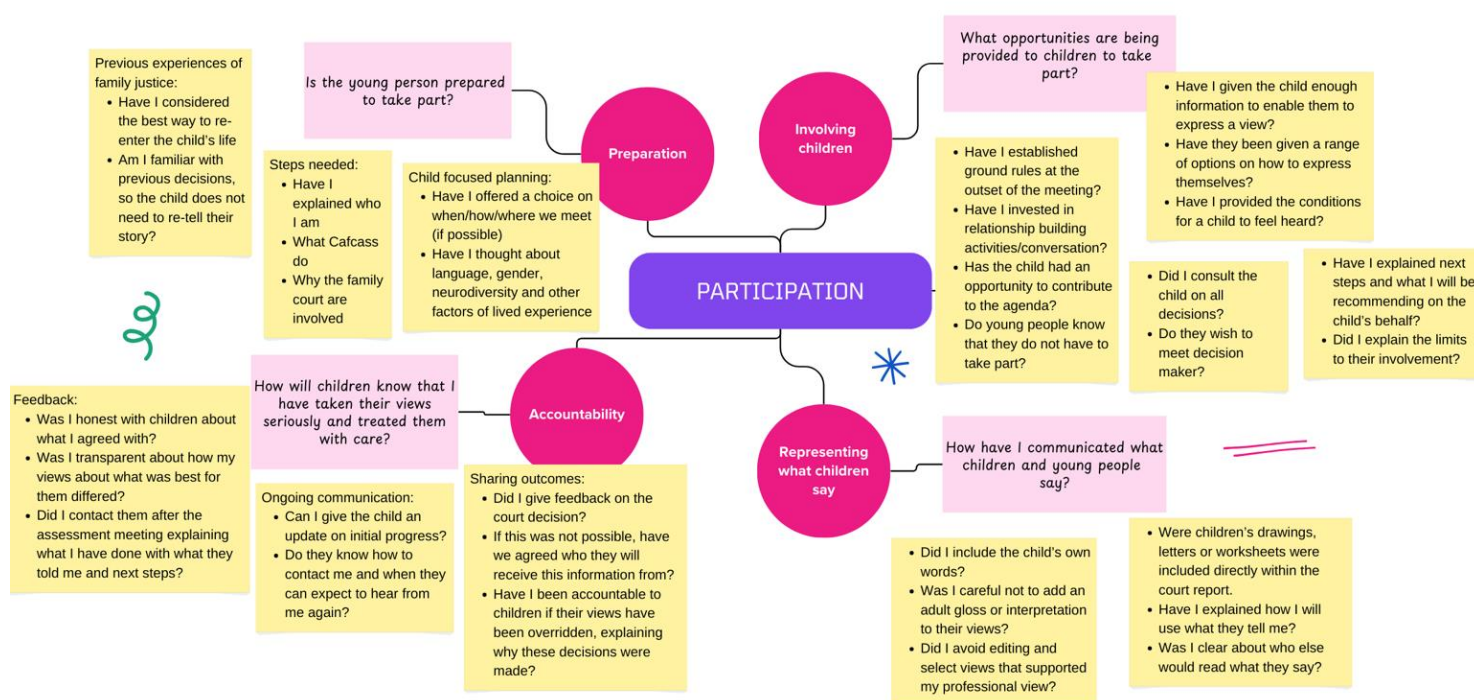
Delineation of this topic is particularly important. The findings have revealed that there are several factors that influence how children are involved, particularly the environment of managing risk and protecting children from harm and the operating system of welfare or best interests. Both provide a complex setting, which alongside the legal process, can make it difficult to ensure children and young people's rights are prioritised.

To integrate how child participation unfolds in social work practice, sociological theories of childhood guided analysis of the data to advance our understanding of how practice aligns or deviates from rights-based understanding of children and young people. The findings suggest that practitioners who focus on children's vulnerability or proffer a developmentalist focus can suppress children's views, correlating with findings from other studies, which suggest that additional barriers are created through overprotectiveness or a presumption of limited competence (Winter, 2009). Furthermore, their participation can be overlooked when social workers want to 'relieve' children of the 'burden' of communicating about family issues (Lefevre, 2018) or by believing that they are unable to usefully contribute to difficult decisions (Leeson, 2007). The findings from the Young People's Board sought the opposite of this developmental paradigm, positioning children as social actors within their family court proceedings, who need not only to be heard but to have their rights upheld. Yet, the findings revealed that practising in the field of family justice where there is a welfare imperative, and the best interest principle is central, it is difficult for practitioners to balance both.

It is within this context that the principles of participation have been both misunderstood and misapplied. The study illuminates that if we are to transform children and young people's experiences of family justice a tailored model for

participation is needed that reorganises children and young people's involvement as a process and not a single event, grounding practice in a theoretical child-centred framework. The participation models discussed throughout this thesis provide a good starting point but must be developed to integrate the specific conditions of family justice, recognising the child's own social and relational context (Maynard, 2015), as well as that of professionals and the macro influences on this social work domain. Furthermore, providing opportunities for professional development, rather than solely relying on practice directives or performance indicators, is needed if practitioners are to gain a deeper introspective cognisance of a rights-based way of working with children and young people involved in family justice. The participation model for private law practice, a research output from this study suggests some clear actionable steps that could move practice forward.

Figure 9 Participation Model for Private Law Practice



The model has been developed in light of the participation resources that exist within the field of children's rights, citizenship and advocacy work. It connects some of the key themes that were discussed in Chapter Two around child participation with the findings of this study and captures what meaningful participation could look like in the realm of private law practice. The Lundy model

(2007) and Lansdown's Conceptual Framework (2018) along with other authors (Hart, 1992; Shier 2001), whose work was reviewed earlier, have been instrumental in designing this research output, assisting appreciation and understanding of the complexity of child participation. The existing models establish that rather than adults being tasked with making decisions about whether to involve children, the UNCRC upholds that young people have a right to be included. Participation is better understood, therefore, within the framework of the civil rights embodied by the CRC rather than being considered as an isolated provision under the convention (Landsown, 2018). What this means for practice, is that there is an obligation on those working with children involved in private family law proceedings to fully realise that the child's right to be heard is relevant and indivisible from their best interest and has implications for the role that children and young people can play in their own protection.

The Participation Model for Private Law Practice attends to the nine basic requirements as set out in the UN Committee's General Comment on Article 12 (see appendix 10), incorporating the key tenants that the CRC stipulate as upholding meaningful and ethical participation. It attends to the necessity for tokenistic approaches to be avoided and thus expands on the most basic and primary level of participation that was characterised within the files analysed for this study. It develops the concept of respect that is found within the Cafcass Together with Children and Families Framework, launched (2021) by demonstrating what participation that is respectful looks like in practice. It also addresses how adult/child power imbalances can be addressed and how the voluntary nature of children's involvement could be made clear. The model particularly attempts to build upon the information that young people require, which the CRC characterises as 'full, accessible, diversity-sensitive and age appropriate' (General Comment 12, UNCRC:29). Similar attention is given to the feedback that children need in line with the work of Lundy in this regard (Lundy, 2018). Establishing that improved information, feedback and accountability has much to offer if further improvement is to be achieved.

I argue that achieving meaningful opportunities for children and young people's participation within private family law practice is achievable and to be fully

embraced must run alongside a commitment to the training and resources practitioners need to be supported to challenge the assumptions made about children and young people. This begins by recognising that young people have agency to act and be involved in their private law family proceedings, whilst acknowledging that the form and type of participation will look different for each child. Furthermore, it requires that adults provide the environment for participation that does not exacerbate vulnerability but enables children to influence how they are heard in a rights focused way.

Implications for Family Justice

The Ministry of Justice acknowledge that the family justice system, as it operates currently, can reinforce the conflict that separating families find themselves in, with parents pitted against each other to 'win' a legal battle. They accept that these experiences are especially damaging for children, 'with effects that can last a lifetime' (MoJ, 2023:4). Since 2022, attention has been given to reforming the justice system, as part of this the Pathfinder Pilot, is seen as revolutionary in strengthening children's voices. Yet, it is apparent from the recent study of The Welsh Government, who reviewed what the pilot meant for children's participation, that problems consistent with those identified in this study remain. The children responding to the research project indicated that they experience feelings of confusion before, during and after engaging with their family court advisor; are unaware of their right to make choices around their meetings with Cafcass or alternative ways of engaging with participatory processes; and seek an improved process of court outcomes being shared (Jones, 2023).

This reformed model of family justice, which has been expanded throughout England and Wales does, however, have the potential to respond to the issue identified by Hargreaves et al., (2024), who established that only half of children in England (53.9%) and less in Wales (47.5%) whose proceedings commenced in 2019 had the opportunity to be heard in the proceedings (through involvement with Cafcass/Cafcass Cymru). However, others suggests that the problems lie deeper as the system of family justice fails to provide children with procedural rights and unfairly and variably distributes provisions (Fortin, 2009). It is also said that foundational change is needed, moving from seeing divorce and separation as an

adult issue to one where children have agency and rights (Day Sclater & Piper, 2001).

Despite it being generally accepted that listening to children's views will lead to better decisions about their lives (Morrison, et al., 2020), there remains no English and Welsh law that establishes that upon parental separation children and young people have a right to be consulted about their future. This is not the case under Scottish law, as the Children (Scotland) Act, 1995 s. 6 (1) states that those with parental responsibility shall regard the views of children when making major life decisions (depending on age and maturity). This obligation makes it clear to parents, professionals and those working within family justice to not only listen carefully to what young people say, but to provide genuine means of participation.

The wealth of legislative and guidance frameworks, alongside social work and family law research detailed in the literature review, set out why involving children in decision-making is important. Although developments have been made and there are strengths to the practice revealed within this study, the findings also concur with the research which pre-dates it, that we need to do more to uphold children's rights in this complex area of work. Children and young people's experiences of private law family proceedings cannot be separated from the context of family justice and the social and relational conditions that it creates. It is therefore necessary that a system approach is adopted. It is worth mentioning that despite the international framework of the UNCRC having established that periodic reviews are essential to monitoring progress, the family justice sector is not leading the way in terms of holding those who contribute to account. It is suggested that there is room to do more to ensure that all those operating within family justice demonstrate a purposeful commitment to the CRC. An example of a strategic approach to embedding children's rights can be seen in *The Right Way*, the framework developed by the Children's Commissioner for Wales, for public bodies to use to integrate children's rights in decision-making, policy and practice (2017).

Future research

To conclude this thesis, attention is given to the limitations that surround this study, before identifying avenues for future research.

An assessment has been provided of children's participatory experiences of private family law, using two combined methods grounded in qualitative research. The research process sought to move beyond a conventional evaluative study, using social work records to generate data followed by analysis. Although not fully participatory in nature, it intended to move towards this approach to research, through involving children and young people with experiences of family justice to generate knowledge and consult on key issues. It was driven by a motivation to better understand ways of working and evaluate children's experiences, recognising that to do so as a researcher alone would fail to give attention to the views of young people, who were at the centre of this research activity. Due to limitations of a professional doctorate scope, practitioners' views were not included, except as recorded on the files and it is noted that there is existing research which applies this method (see the work of Mantle, 2006, 2007).

There is a limit to the generalisability of these findings, given that it was taking place as practice changes within Cafcass operationalised. A framework aimed at improving the relationships that children and young people have with Cafcass throughout their family court proceedings was developed and implemented during the study period. Challenges faced when undertaking a professional doctorate, including the lack of resources and co-researchers, means that such research activity takes time and inevitably the social world it seeks to understand does not stand still. However, the findings could be drawn upon as part of future research, which evaluates these organisational changes for comparative purposes. The insights gained here could be contrasted with the organisation changes assessing if this leads to improvements to children's experiences, as intended. Further, the findings have the potential to develop the existing framework, thus contributing to ongoing progression.

The study conducted a narrow investigation into a sample of files from children aged between six and 17, the justification for this age criteria was provided in the Chapter Three; however, it is important to highlight here that analysis of the participatory experiences of younger children has not been undertaken and is an area of research that must be completed. Additionally, the contribution of the Family Justice Board was invaluable to this study, yet it is acknowledged that they

are a group of young people that are well used to responding to research and evaluative processes. There are missing voices from this study and there will be aspects of practice that have not been collated. The research was conducted on the basis that its findings were unlikely to be generalisable, however, the correlation between the understanding gained through this study with other research in the field, particularly the sentiments arising from the Welsh Government's review of child participation in private law proceedings (Jones, 2023) and the evaluations undertaken by the Nuffield Family Justice Observatory, submits that the key themes and issues arising share commonalities with others. These patterns are critical to understanding children's experiences and making improvements to services so that they are more effective.

The study has identified that there are theoretical and sociological understandings of children and childhood which are used to both uphold and curtail the rights of young people within everyday practice. Practitioners are likely to benefit from having the opportunity to learn and reflect on their tacit knowledge and have unhelpful assumptions about the passivity or incapability of children challenged. This is particularly important when it comes to improving how their protection and participation rights are balanced within the legal context of child welfare and better understanding the interaction between agency and vulnerability. From a theoretical perspective, it would be interesting to explore whether any shift occurs in the barriers which were seen to challenge participatory practice with practitioner training and support.

Finally, within the methodology, I reflected on my role as the researcher, someone with subject knowledge of the area under study and a closeness to the work of Cafcass and the experiences of those who encounter family justice. I discussed the familiarity problem in detail there, as well as my reflections on being a researcher in practice. The extent to which I have influenced this study cannot be fully quantified. However, at the very least, I have brought my own subjective knowledge and positionality. Another researcher may have approached the topic in a different way and their distance may have led to other influences on the data. I consider that my positionality has enabled me to be fair and balanced both about the experiences of children and the challenges encountered by practitioners, being

realistic about the significance of the findings and the messages that can be taken from the research study. Yet, continued research has much to add if we are to move practice forward and understand child-centred compliance.

The complexities within the arena of family justice, and particularly private law family proceedings, need continued attention. They feature a group of children and young people who are often forgotten about when it comes to designing and implementing welfare services, yet we know that harmful experiences do arise from parental separation and divorce. Time and attention must be given to better responding to the needs of these young people so that they receive the support they need at, what can be, a difficult and confusing time in their lives.

Conclusion

This study has generated new evidence about children and young people's experiences of private family law proceedings, how they are seen and understood within the context of family justice. It has drawn attention to a group of people who need improved services centred around their right to information, participation, freedom of expression and other fundamental rights. This study is not intended as a criticism of the practice of family court advisors, and I hope it is not received as such. The research established practitioners' commitment to gathering children's views, working creatively and sensitively with them and facilitating change. Yet, it does identify that if Cafcass are to achieve their vision of providing an exceptional service for all children and young people who encounter their service, there must be a strategic approach to embedding children's rights. The progressive steps being taken already are recognised and it is intended that the insights provided through this study are complementary to the work underway.

The bureaucratic factors that impact upon the social work role within Cafcass, and social work more generally, has not been the focus of this study, but one cannot consider practice challenges or the experiences of those who interface with public services, without acknowledging the role that managerialism and finite resources play. Cafcass was designed to provide support to families encountering family justice. However, the increasing volume of work, amongst other issues, have compromised this element of its function. The momentum is changing, as shown

by the renewed attention on reform and improvement to the service children and young people receive when their family comes to court. I aim to ensure that the outputs from this research endeavour are taken forward in practice so that it has a positive impact for children, young people and practitioners. Through publishing this thesis and contributing to the existing body of research, it is envisioned that I, amongst others, will continue to draw attention to this important area of social work practice with the intention of enforcing positive change for children and young people.

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Appendices

1. Data Extraction Tool

A. Study ID

B. Service Area Code (select from list): Area One, Area Two, Area Three

C. Has the child/yp received a service from Cafcass before? (select frequency from list): This identifies whether this is the first time a child/family has been involved with Cafcass and has been asked to identify whether the child has been at the centre of repeat family court proceedings involving Cafcass

D. Duration of proceedings (enter numeric value): This question identifies for how many calendar weeks a child/yp file has been open to Cafcass and will help in identifying how long their family court proceedings have lasted

E. How many Cafcass officers has the child met or spoken to: (select frequency from list) Lead Work After First Hearing (WAFH) officers have been identified as these practitioners are more likely to have met and engaged with the child/yp

F. Gender (select from list): The represented gender terms are those identified within the initial sample, only three identities were recorded; male, female, trans

G. Age (enter numeric value): Young people aged +18 removed as outliers, important to gain the experiences of a range of ages and all genders represented within the sample

H. Ethnicity (select from list): Census 2021 categories used. The reliability of this category relies on practitioner recording

I. Language (enter language): within the sample there is a wide variety of first languages. The reliability of this category relies on practitioner recording – potential problem is whether practitioners have made assumptions based upon the language used to communicate with the child/young person rather than recording the language used at home/or that the child uses at home, there is nowhere to record multiple languages.

J. Religious Faith (select from list): Census 2021 categories used.

- K. Child needs (select from list):** reflect the needs/issues identified by the practitioner to be affecting the child/family
- L. How did Cafcass contact the child in advance of assessment meeting (select from list):** records mode of introductory engagement
- M. Points of contact (select frequency from list):** records how many points of contact there were between practitioner and child/yp
- N. How did the practitioner detail they would engage with child/yp (select from list):** recording within the child's plan should be used to answer this question, any additional labels will be added to the form during the course of the audit.
- O. What does researcher make of the quality of planning**
Clear planning: planning that was individualised to the child's needs, that set out best thinking about child engagement, including consideration of how the child would be heard participation factors, such as follow up communication.
Some planning: there were aspects of planning for child engagement but limited, not individual, generic etc.
No planning: child's plan was incomplete or sections relating to child engagement were missing or unclear
- P. How did child/yp share their views (select from list)?** records patterns of direct work used with children and yp.
- Q. Where did child/yp's meeting with Cafcass take place (select from list):** captures the places that meetings between child/yp and Cafcass take place
- R. Were child's words used with report to court (select from list):** identifies how widely children's own words are being reported
Extensively: child/yp's quotes, sentences, direct work used as the dominant source of conveying child's wishes
Sufficiently: child/yp quotes, sentences used alongside social work interpretation of what the child/yp wishes
Minimally: mostly social work interpretation of what the child has told Cafcass
No: report didn't use any quotes or direct sentences expressed by the young person

- S. Was direct work included in the report (select from list):**
- T. Did the Cafcass recommendations align with the wishes of the child/yp (select from list):**
Yes: symmetry between Cafcass recommendations & child views (inc. secondary decisions)
Partially: some symmetry between Cafcass recommendations & child views but not all aspects (i.e. decisions made about other forms of communication not discussed)
Unclear: not possible to clearly answer from info on file
No: difference between child's views and Cafcass recommendations (comment on - the discrepancy is attended to, researcher can gain understanding of why views were departed from within the file, **or** difference between child's views and Cafcass recommendations but it is unclear why views were departed from)
- U. Did the child/yp meet a judge (select from list):**
- V. What forms of communication did the child/yp receive following their meeting with Cafcass (select from list):**
- W. Was the final order made in line with the child's wishes (select from list):**
- X. Additional information within the file relevant to the study:** include any useful data for study that isn't captured, key strengths or areas of concern
- Y. Researchers' reflections on the child's file:** what does case file information tell us about the service child/yp received, where is the child within the file, does engagement appear meaningful, researchers' thoughts and feelings after reading the file
- Z. Theoretical themes**

2. SOCSI Ethics Approval Letter



School of Social Sciences
Ysgol Gwyddorau Cymdeithasol
Head of School, Penmaeth yr Ysgol
Dr Tom Hall

Cardiff University
Glamorgan Building
King Edward VII Avenue
Cardiff CF10 3WT
Wales, UK
Tel: +44(0)29 2087 5179
Fax: +44(0)29 2087 4175
www.cardiff.ac.uk/social-sciences

06 May 2020

Our ref: SREC/3676

Lauren Doyle
Professional Doctorate Programme
SOCSI

Prifysgol Caerdydd
Admitted Morningning
Rhodfa'r Ddraig Edward VII
Caerdydd, CF10 3WT
Cymru, Y Deyrnas Unedig
Ffôn: +44(0)29 2087 5179
Ffacs: +44(0)29 2087 4175
www.caerdydd.ac.uk/social-sciences

Dear Lauren,

Your project entitled '*An exploration of children's experiences and involvement in private family court proceedings*' has now been approved by the School of Social Sciences Research Ethics Committee of Cardiff University and you can now commence the project should all necessary forms of approval been received.

If you make any substantial changes with ethical implications to the project as it progresses you need to inform the SREC about the nature of these changes. Such changes could be: 1) changes in the type of participants recruited (e.g. inclusion of a group of potentially vulnerable participants), 2) changes to questionnaires, interview guides etc. (e.g. including new questions on sensitive issues), 3) changes to the way data are handled (e.g. sharing of non-anonymised data with other researchers).

In addition, if anything occurs in your project from which you think the SREC might usefully learn, then please do share this information with us.

All ongoing projects will be monitored and you will be obliged periodically to complete and return a SREC monitoring form.

Please inform the SREC when the project has ended.

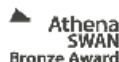
Please use the SREC's project reference number above in any future correspondence.

Yours sincerely

Professor Alison Bullock
Chair of School of Social Sciences Research Ethics Committee



THE QUEEN'S
ANNIVERSARY PRIZES
FOR OUTSTANDING ACHIEVEMENT
2017



Registered Charity no. 1136855
Phone: 01690 5042, 01690 5055

3. Organisational Approval Letter



Ms Lauren Doyle
By email to: Lauren.Doyle@cafcass.gov.uk

Cafcass
3rd Floor
21 Bloomsbury Street
London
WC1B 3HF

7 September 2020

Dear Lauren

Letter of Agreement between Cafcass and Lauren Doyle for 'An exploration of children's experiences and involvement in private family court proceedings'

I am writing to confirm that the Cafcass Research Advisory Committee has agreed that you may undertake your research project involving analysis of 60 to 150 case files as set out in your application dated 6 July 2020. The conditions on which this approval has been given are:

1. That Cafcass is kept up to date on progress and findings of the research and is given sight of the findings in advance of sharing with an external audience;
2. That a small staff group is formed to support and advise on your developing research;
3. That additional time is factored into your proposal to account for requirements for processing the requested data by Cafcass Analytics;
4. That Cafcass is acknowledged when the findings are shared with an external audience, and in the final research report and any publications arising from it;
5. That Cafcass is given the opportunity in advance to make comments on any material due to be published or presented to an external audience;
6. That a full copy of the final report and any subsequent publications arising from it are provided to Cafcass for consideration by the Research Advisory Committee for placement in the Cafcass library;
7. That, on completion, the researcher will produce a summary of the research – including any relevant policy and practice implications for Cafcass – and consider appropriate methods for disseminating findings internally, such as via a webinar and/or intranet article;
8. That if there are any major changes in the research parameters and/or publication of research findings you will advise Cafcass' Senior Research and Evaluation Manager and seek re-approval from the Research Advisory Committee if needed.

Please could you confirm by return email your acceptance of the above to: saif.ullah@cafcass.gov.uk

Please do not hesitate to contact me if you have any further questions.

Yours sincerely,

Saif Ullah
On behalf of Research Advisory Committee
Senior Research and Evaluation Manager

4. Data Coding Framework

Information available in child friendly and appropriate formats	A1. No information appears to have been shared with child/yp or is limited, they don't appear to understand why they are meeting Cafcass or what will happen with what they say	A2. Information appears to have been shared with child/yp about the nature of their meeting with Cafcass, roles and responsibilities and next steps explained.	A3. Child understands why they are meeting Cafcass, what will happen with what they say, explanation of court process i.e. covering topics such as what a court order is.	A4. Child understands why they are meeting Cafcass, what will happen with what they say, explanation of court process & sets out follow up communication. Child friendly formats are used in languages that the children understand, including children with visual or hearing impairments.
Planning for child engagement	B1. Planning incomplete or unclear	B2. Planning takes account of the issues that may affect engagement, general terms used which don't respond to the needs of the child	B3. Planning takes account of the issues that may affect engagement and considers unique needs of child in planning and the sharing of child voice	B4. Planning is individualised, child has been consulted on when/how they meet Cafcass. Planning identifies best thinking around child engagement and the FCA considers the wider aspects of participation, as relevant i.e. how outcomes will be shared.
Child engagement	C1. Little thought or attention has been given to the way in which a child may express themselves or take part in meeting Cafcass. No recording.	C2. Ways of working and methods are fun, enjoyable and/or enable children to voice their opinions.	C3. Children are involved in deciding what activities will take place, have formulated their own views & given choice not to take part if they so wish.	C4. Children have expressed choice over how they engage, they have formulated their views or declined to. They have participated to the highest possible level consistent with their capacities.
Impact of child engagement	D1. It is not clear whether child's views were listened to or influenced recommendations/decision making. Emphasis on professional judgement at the detriment of child voice.	D2. Child's views were listened to and minimally reported. They did not or partially influence the Cafcass recommendations. i.e. a decision may have been made that a child was not consulted on.	D3. Child's views were listened to and made up a significant part of the court report and/or stood out & influenced all recommendations	D4. Child has opportunity to express a view on all the issues of relevance to their lives. Their views stood out in the court report & have been involved in decision-making process.
Child engagement is accountable	E1. Ending of Cafcass work and/or decision making is not shared with child/yp. It is not clear that they have understood the impact of involvement.	E2. Children are given feedback on the impact & value of their involvement.	E3. Children are given feedback on the impact & value of their involvement and/or the outcome of court decisions.	E4. Children are given feedback on the impact & value of their involvement and/or the outcome of court decisions Consideration was given to child meeting judge, they received a child friendly judgement, court order, they accessed complaints, or informed practice.

5. Poster 1: Logan

HI, I'M LOGAN

ABOUT ME

I am 8 years old. My mama and papa split when I was 6. Everything was ok before but not anymore.

Mama & papa are going to court. I couldn't go to school today because I met a man from Cafcass. He said a Judge is helping us.

I didn't know I was meeting the man. He seemed nice. He asked lots of questions. I said I want things to be like they was before.

The Cafcass man said I could write a letter to the judge so I did. He said he would show my letter to the judge.

I WONDER IF THE JUDGE SAW MY LETTER?

6 MONTHS LATER

I think maybe the court stuff got finished. I am not sure. Things seem ok again..

My letter to the judge

I would like being with my mama more but still with my papa

I would like to be with my mama for Wednesday, Thursday, Friday and Sunday. I would like to be with papa on Tuesday, Monday and Saturday.

From Logan

6. Poster 2: Karina



**Hi,
I'm Karina**

I am aged 13. I have two homes.
I live with my mum one week and
my dad the next. It's been like this
since I was 7.

I have two younger brothers, they
live with my mum.

My parents are going to Court again.
We went before, when I was younger.

Sarah asked me what I wanted to happen
in my life. It seemed important.

I met a different Cafcass lady this
time. I am not sure if she knew I had
been at her office before. Her name is
Sarah.

She told me about the judges and how
the court stuff happens.

Sarah spent ages writing down
everything I said. She is going to use
my words in her report.

9 months later!

It was ages ago I met Sarah. I thought
she had forgotten me. I got a letter from
her today. She said that the court stuff is
over.

The Judge agreed with me, and so did
my parents. It's all finished now.



7. Poster 3: Wren/Jamal

MY NAME IS JAMAL
I AM AGED 15

I met with someone from Cafcass once but the court stuff went on with my family for 32 weeks

No-one contacted me to tell me the judge's decision

The FCA agreed with me and wrote this in their report

The FCA told me what a court order was and asked how I would feel if the judge made one for me

The FCA working with me did not complete my child's plan or record our meeting on my file

They did tell me why I was meeting them and asked what I wanted to happen

MY NAME IS WREN
I AM AGED 10

I met with my FCA twice. It took 29 weeks for the court to help my family.

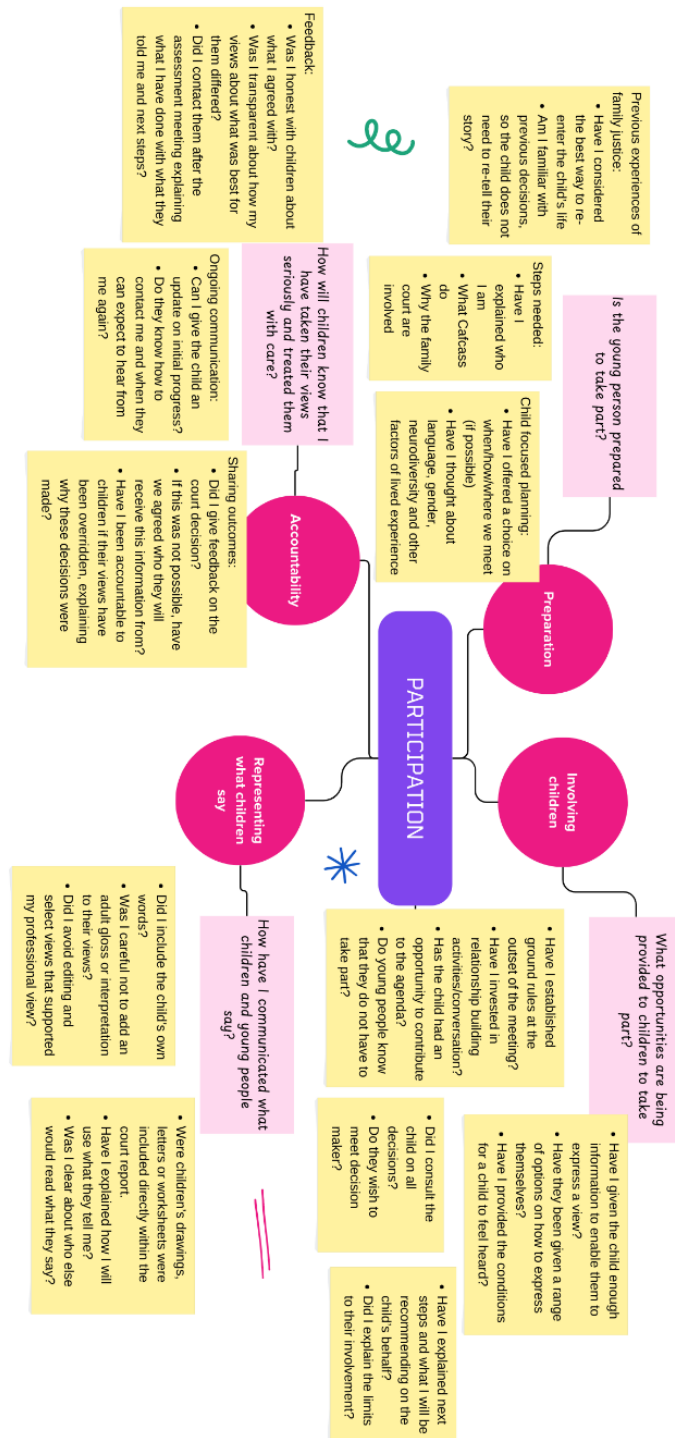
I have ADHD. it helped to meet the FCA at my home with mum. This is where I feel best.

I wrote down how I feel about seeing dad. The judge won't be able to see it. It wasn't included in my Cafcass report.

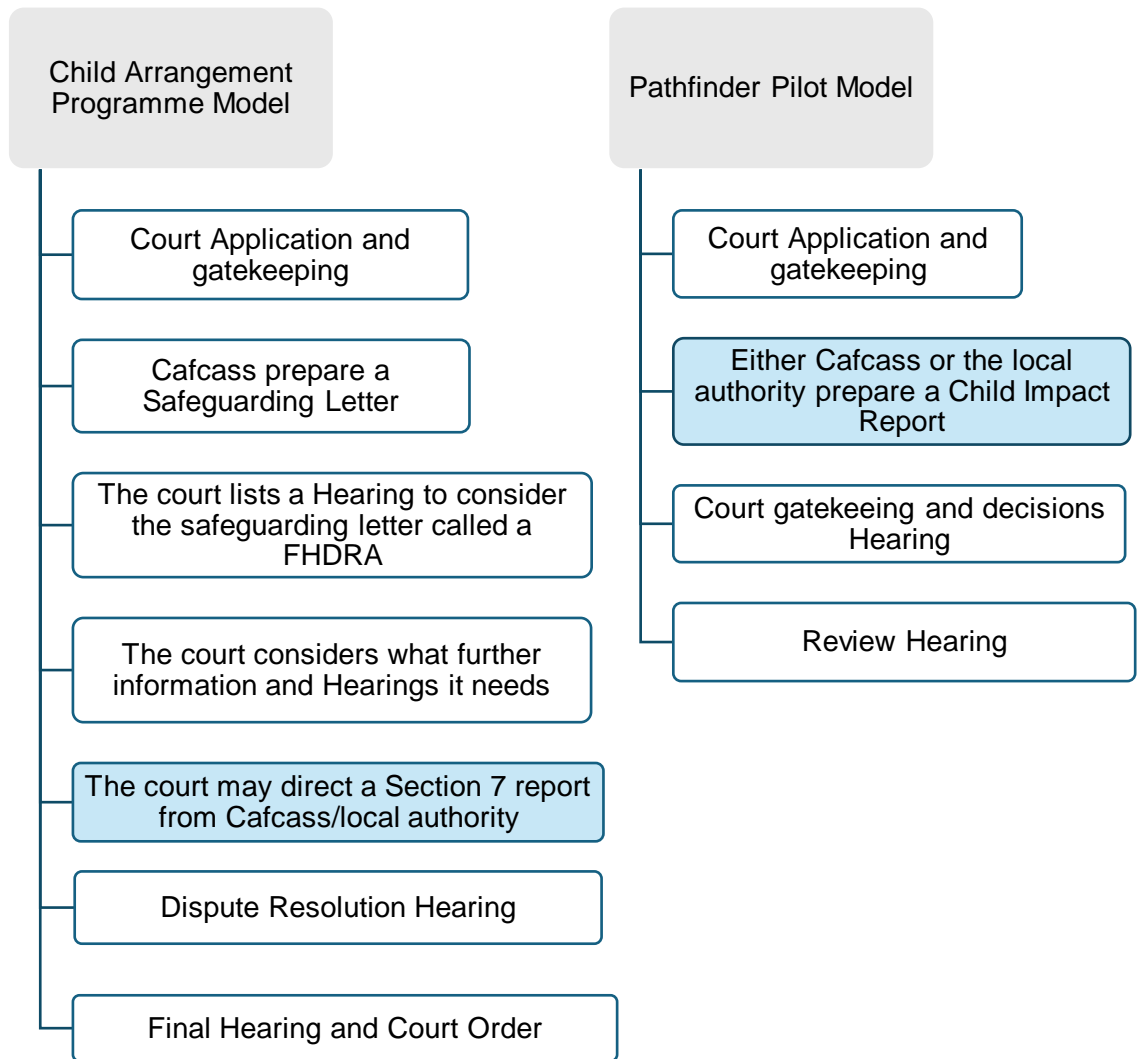
I am not sure what happened with the court stuff. I didn't hear from anyone again.



8. Participation Model for Private Law Practice



9. Private Law Pathways



* The shaded boxes in each model, demonstrate where in each process children and young people have the first opportunity to take part in their family court proceedings.

10. The Basic Requirements for the Implementation of the Right of the Child to be Heard

- (a) Transparent and informative - children must be provided with full, accessible, diversity-sensitive and age-appropriate information about their right to express their views freely and their views to be given due weight, and how this participation will take place, its scope, purpose and potential impact
- (b) Voluntary - children should never be coerced into expressing views against their wishes and they should be informed that they can cease involvement at any stage
- (c) Respectful - children's views have to be treated with respect and they should be provided with opportunities to initiate ideas and activities. Adults working with children should acknowledge, respect and build on good examples of children's participation, for instance, in their contributions to the family, school, culture and the work environment. They also need an understanding of the socio-economic, environmental and cultural context of children's lives.
- (d) Relevant - the issues on which children have the right to express their views must be of real relevance to their lives and enable them to draw on their knowledge, skills and abilities. In addition, space needs to be created to enable children to highlight and address the issues they themselves identify as relevant and important
- (e) Child-friendly - environments and working methods should be adapted to children's capacities. Adequate time and resources should be made available to ensure that children are adequately prepared and have the confidence and opportunity to contribute their views. Consideration needs to be given to the fact that children will need differing levels of support and forms of involvement according to their age and evolving capacities
- (f) Inclusive - participation must be inclusive, avoid existing patterns of discrimination, and encourage opportunities for marginalized children, including both girls and boys, to be involved. Children are not a homogenous group and participation needs to provide for equality of opportunity for all, without discrimination on any grounds. Programmes also need to ensure that they are culturally sensitive to children from all communities
- (g) Supported by training - Supported by training - adults need preparation, skills and support to facilitate children's participation effectively, to provide them, for example, with skills in listening, working jointly with children and engaging children effectively in accordance with their evolving capacities. Children themselves can be involved as trainers and facilitators on how to promote effective participation.
- (h) Safe and sensitive to risk - in certain situations, expression of views may involve risks. Adults have a responsibility towards the children with whom they work and must take every precaution to minimize the risk to children of violence, exploitation or any other negative consequence of their participation.
- (i) Accountable - a commitment to follow-up and evaluation is essential. For example, in any research or consultative process, children must be informed as to how their views have been interpreted and used and, where necessary, provided with the opportunity to challenge and influence the analysis of the findings. Children are also entitled to be provided with clear feedback on how their participation has influenced any outcomes.

Source: General Comment No 12, CRC (2009)