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Abstract

The aim of this research is to examine the ways children and professionals make sense of the practice and experience of child participation in public law Children Act proceedings. Conceptually, child participation is largely rooted in article 12 of the UN Convention on the Rights of the Child, which provides that children should have the right to express their informed views freely to decision-makers and to have those views taken into account.

In public law proceedings, these ideas seem difficult to translate into practice however. Professionals feel disempowered and discomfited by versions of children’s participation that involve children’s more direct involvement in the Court process and tend to regard children’s participation as interfering with, disrupting or distracting from their ability to protect children’s welfare effectively. Children also feel disempowered and discomfited by versions of participation that exclude or marginalise them from their own proceedings, as they feel disconnected from the decisions that affect their lives so profoundly. Paradoxically, children tend to regard professional practices around protection as interfering, disrupting or stifling their ability to participate meaningfully and consequently to contribute to their own protection and welfare.

In part, this research builds on previously noted concerns in the academic literature about whether the principles enunciated in child participation policy translate well into child protection practice. The research is novel because it expands the focus of child participation in child protection work to the arena of public law proceedings themselves. It is also novel because it is based on interviews with legal and care professionals alongside interviews with those who as former child subjects themselves sought to participate in their own proceedings beyond giving their ‘wishes and feelings’ to professionals to report to the Court in their stead.

Using discourse analysis, I examined the talk generated during those interviews with social workers, guardians, solicitors and barristers as well as individuals who experienced public law proceedings as children, to see how those participants make sense of the practice and experience of child participation in what I show to be a highly contextual and contingent arena. My research demonstrates that the dominant discourse of welfare-through-protection produces
and perpetuates versions of child participation in public law proceedings that inevitably place professionals at the centre of public law proceedings and marginalise children. Professional participants talked about child participation as deeply unsatisfying and as occasions that were fraught with risk for them personally and professionally whilst proceedings-experienced participants spoke about the tight professional regulation of their participation as stifling their opportunities to participate meaningfully. In consequence, perceiving child participation as blocked, imaginary or unachievable means that participation itself appears both deeply affect-laden and paradoxical to everyone. Consequently, I argue that the practice of child participation occupies a highly contentious space within public law proceedings because of the way in which child-adult relations are organised around the contradictory cultural and discursive assumptions children and professionals make about childhood and children’s protection/participation needs. Thus, whilst child participation might always be understood to involve children confronting and negotiating power dynamics with professionals, I found that the deeply embedded and contingent nature of these affective/discursive beliefs and practices served to confound more relational opportunities for children’s participation, and in so doing, created a paradox of participation.
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LEGISLATION LIST

Adoption Act 1976, s6

Children Act 1975

Children Act 1989, ss1(1), 1(3), s25, s31, s38, s44

Children and Young Persons Act 1933

Children and Young Persons Act of 1963

Children and Young Persons Act of 1969

Prevention of Cruelty to Children and Protection of Children Act 1889, s1

Prevention of Cruelty to Children Act 1904

Rule 4.16 Family Proceedings Rules 1991

Rules 12.14 and 16 Family Court Rules 2010


CASE LAW LIST

A (Letter to a Young Person), Re (Rev 1) [2017] EWFC 48 (26 July 2017)

Re Agar-Ellis (1883) 24 ChD 317, 53LJ Ch 10, 32 WR 1, 50 LT 161

B v B (Minors) (Interview and Listing Arrangements) [1994] 2 FLR 496.

Gillick v West Norfolk and Wisbech Area Health Authority [1986] 1 FLR 224 (House of Lords)

Re L (A Child) (Contact: Domestic Violence) [2000] 2 FLR 334

LM v Medway Council [2007] EWCA 9

Regina v Secretary of State for Education and Employment and others (Respondents) ex parte Williamson (Appellant) and others [2005] UKHL 15.

Re W (Children) (Abuse: Oral Evidence) [2010] UKSC 12

REPORTS LIST

Report of the Committee on Children and Young Persons (1961) (Chairman Viscount Ingleby)

Cmd 1191 London: HMSO


Report of Inquiry into the death of Jasmine Beckford (Child in Trust) 1985


Family Justice Council’s ‘Voice of the Child’ Committee 2010
CHAPTER 1 - CHILDHOOD, CHILD PARTICIPATION AND PUBLIC LAW CHILDREN ACT PROCEEDINGS

Introduction

Over the course of my thesis, I investigate how children and professionals make sense of child participation in public law proceedings in England and Wales. This means I am interested to understand how people make sense of child participation in proceedings under the Children Act 1989 where the State asks the Court to remove children from home under an Emergency Protection Order\(^1\), Secure Accommodation Order\(^2\) or (interim) Care Order\(^3\), or otherwise to regulate children’s home circumstances under a(n) (interim) Supervision Order\(^4\). I refer throughout my research to these types of proceedings as ‘public law proceedings,’ as together, they amount to Court actions available to the State in this legal jurisdiction to protect children who are considered to be living in situations whose welfare has been adversely significantly affected as a result.

Since the ratification of the United Nations Convention on the Rights of the Child 1989 (hereinafter ‘the Convention’) there has been a concerted drive, in public law proceedings as elsewhere, to involve children in decision-making processes that affect them. What is perhaps puzzling is why, notwithstanding the obligation to pay heed to the articles of participation contained in the Convention not many children participate in their own public law proceedings in ways that supplement how their views are conveyed to the Court by various professionals on their behalf. Implicit to understanding this conundrum, is whether beliefs about childhood as a time of participation (children’s rights to participate, voice and agency), have sufficient traction to alter powerful understandings about childhood as a time of total protection, underpinned by the conflation of child protection with innocence, incompetence, vulnerability and dependence. This is important because as I highlight in section 1.4 the academic literature posits that the depiction of childhood in child protection processes as a time of ‘protection’, ‘innocence’ or

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\(^1\) Section 44 Children Act 1989
\(^2\) Section 25 Children Act 1989
\(^3\) Sections 38 and 31 Children Act 1989
\(^4\) As above
‘becoming’, operates to uphold a societal status quo where protecting children and providing for their welfare/protection needs is privileged over child participation (see Smart et al. 2001; Smith et al. 2003). Indeed, Jenks (2005) has argued that the ‘protectionist experience’ (p318) of childhood, which I argue in chapter 2 exists in an expanded form in public law proceedings, mandates institutional and professional practices designed to protect and in so doing, perpetuates children’s dependence. He goes on to argue that these protection-focused practices also mandate the high levels of surveillance and control professionals have over childhood, that instead of being advantageous to children, restrict opportunities for children who wish to participate. In short, he blames these dominant protection-based discourses for making it difficult to both fully protect and hear children.

Thus, by researching child participation in the context of public law proceedings, I am highlighting the difficulties that arise for professionals and children when children who want to participate, something usually perceived and supported as beneficial in other contexts, are perceived as wanting to do something paradoxically detrimental and potentially harmful.

1.1 Contextualising my Topic

Locating my research within the arena of public law proceedings enables me to draw attention to the discourses that drive understandings of child participation that contradict and conflict with more usual framings of child participation as beneficial and empowering for children. These are the discourses where in practicing child welfare through a lens of child protection, child participation is perceived as only being in children’s best interests if it does not risk exposing children to the potential for harm. As we will see letting children see information and speak about their experiences in unfiltered ways, activities that might be considered crucial to ascertaining children’s ‘wishes and feelings’ can imply problematic assumptions/taken-for-granted ideas about children that directly influence the significance professionals can place on children’s views and experiences.
Further, locating this research within public law proceedings enables me to make visible the correspondingly complex ideas that exist there about a specific population of children, who by virtue of their childhood experiences, have come to the attention of a number professionals as the subjects of escalating child protection measures. Entering public law proceedings raises the stakes further because decisions made about their welfare there can involve their (permanent) removal from their families. Importantly, despite the stakes involved and in stark contrast to the criminal law system where children are expected and indeed can be compelled to speak in Court much more frequently (Brammer & Cooper, 2011), the public law proceedings system is organized around proxy representation for children. Instead, the Guardian meets with the children to ascertain their ‘wishes and feelings’ and then includes those views in their welfare reports and evidence to the Court\(^5\). As we shall see, organizing children’s participation around the participation of professionals has implications for children. Firstly, children’s views become subsumed as part of wider professional practices that are organized around assessing and deciding what is in children’s best interests. Secondly, when professional ideas about welfare are used to inform opportunities for children to participate, achieving supplemental versions of participation becomes much more complex. In that regard, we shall see how the research literature highlights children’s struggle to feel heard, understood and informed and thus able to meaningfully inform the decision-making processes about them, even when their views about their welfare align with those of the professionals charged with monitoring and otherwise assessing their welfare needs.

In consequence, I suggest that a unique problem exists for children and professionals involved in public law proceedings, caused by the dual systemic obligations to both fully protect children and to involve them in decision-making processes. Balancing these competing and potentially contradictory requirements can be extremely difficult and has led some, and I include myself in that group, to believe the processes by which children are afforded opportunities to participate in their own public law proceedings are not working.

\(^5\) The term ‘wishes and feelings’ is inscribed in s1(3) of the Children Act 1989 to reflect how children’s Convention rights to participate are upheld and preserved in England and Wales.
My research is based on the talk of a number of individuals who have first-hand experience of public law proceedings and the systems of participation available to children within that. In line with my theoretical commitment to discourse analysis, I used semi-structured interviews to collate textual data from those participants that foregrounded their expressions, perspectives and nuanced interpretations of common practices and issues within that arena. Broadly speaking, these individuals can be separated into two groups of participants. The first group consists of professionals working in the arena of public law proceedings, namely Children’s Guardians, Solicitors, Barristers and Social Workers. These professionals work within specific legislative and institutional frameworks and draw on that knowledge to advise and assist the Court in making decisions about children’s welfare, including, when they arise, children’s participation needs. The second group consists of individuals who, when subjected to those proceedings themselves as children sought to participate in ways beyond giving their ‘wishes and feelings’ to professionals to report to the Court on their behalf, which is the default version of child participation available. I refer to these participants as the proceedings-experienced participants. I chose this term because, as with professional participants, it reflects the commonality of position from which they speak about their experiences of participating in their own public law proceedings.

1.2 Positioning Myself as Researcher

I have been very fortunate to enjoy legal careers both as a Law Society’s Children Panel Solicitor and then as a Family Law Barrister. My decision to embark on this research arises from my own experiences in this field where I have faced my own challenges in reconciling child participation opportunities within a system, which I felt was geared towards protection and benevolent paternalism, often at the cost of any meaningful attempt to support children’s participation. This is because when Solicitors represent children as the ‘Children’s Solicitor’, their Instructions to act come exclusively from the Court appointed Children’s Guardian. Ordinarily then the child’s Solicitor (or Barrister) represents the child’s views to the Court as part of the Guardian’s overall professional assessment of welfare needs. As a result, children

6 Children Panel Solicitors must have three-year mandatory post-qualification experience and successfully complete the Law Society’s admission process

7 Former Social Workers primarily, employed by Cafcass. Appointed by the Court to act on behalf of the Child(ren) who are subject to public law proceedings.
have no direct influence over how their case is presented and are very much kept at a distance from those representing them. As we shall see in chapter 2.2, whether children are allowed to participate in supplemental ways, such as attending Court, filing evidence or being a witness are contingent on the views of professionals (notably the Social Worker and Guardian) who advise the Judge as to whether any supplemental versions of participation are commensurate with the child’s welfare needs. In short, children can only participate in those supplemental ways if, having heard the welfare views of those professionals, the Judge decides they can.

Part of the Solicitor’s role in representing children is to make decisions about which child(ren) might be sufficiently competent to instruct directly. Primarily this involves meeting with children, who it seemed from the Court papers might be ‘Gillick competent’ and then persuading the Court separate representation was needed for them. If the Court accepts the Solicitor’s view that the child is competent to instruct directly and needs to do so because the child’s case differs substantially to that pursued by their Guardian, (which is in itself no straight-forward task) the Solicitor parts ways professionally with the Guardian and meets with their child client directly in order to prepare that child’s case for Hearings. Otherwise, the Children’s Guardian continues to give the Solicitor instructions even if the child’s case is subtly different to that pursued by the Guardian. This means occasions arise where Guardians have to represent themselves in Court as they can only seek alternative representation when there are other children of the family who need it. These are the complex dynamics that Masson and Winn-Oakley (1999) suggest have resulted in cosy relationships between Guardians and Solicitors where children’s wider participation needs become overlooked and marginalised.

When I became a Family Law Barrister my direct contact with children professionally became much less frequent. Generally, barristers only meet child clients if they have permission to attend Court. This applies even to Gillick competent children, even though it is possible that a barrister will meet with them in advance of a Hearing to help prepare their case but then represent them in Court in their absence. Alternatively, if the child was not ‘Gillick competent’

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8 Gillick competent is the term used in legal proceedings to identify a child who has been assessed as capable to give Instructions directly to their legal team rather than their Children’s Guardian doing this for them. So, a ‘Gillick competent’ child is one who is competent to participate by reading the evidence, giving instructions to their legal team about the case they want presented to the Judge, including in relation to the level of participation they might seek.
but did attend Court, barristers still remain wholly reliant on the Guardian for Instructions about the child’s ‘wishes and feelings,’ as weighted by their professional assessment of the significance they placed on the child’s views in terms of the way conducted their welfare case.

In other ways, my role as a Family Law Barrister expanded my experience of child participation, notably, by representing the Local Authority. On those occasions, it is generally the social workers, whose Local Authority has often been involved with the family for a long time, who come to Court to give instructions. It was during this time that I noticed that the social workers with whom I liaised were also grappling with issues relating to child participation. For them, the appointment of the Children’s Guardian on issue of Court proceedings, meant re-calibrating their practices around children’s ‘wishes and feelings,’ and their participation in protection processes generally, which had been their domain during pre-proceedings but now fell to the Guardian. So, whilst they were still obliged to ascertain children’s ‘wishes and feelings’ as part of their evidence and as part of their ongoing child protection procedures, social workers very much felt their expertise and relationship with the children had been sidelined in favour of the new but more neutrally focused Guardian.

Further, in my successive roles as both Solicitor and Counsel I was tasked on occasion with making or opposing applications for children to attend Hearings, to be a witness or to attend Meetings with Judges. What these applications had in common was that they usually served to expose divisions between professionals and children about what was understood to constitute protection, participation and by extension, what was deemed protective participation. The impression I had was that unless children really had to come to Court, they remained absent, whilst their Guardian and often their Social Worker conveyed their ‘wishes and feelings’ to the Judge, often supported by a letter to the Judge from the child.

Thus, the amalgam of my professional experiences, which brought me into contact directly with legal professionals, care professionals and the children themselves, ultimately raised questions

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9 This includes Early Help services, social work assessments and planning, children in need services and all other services that are offered to children and families that do not yet involve an application to the Court to remove a child from home.
for me about how what seems like a straightforward notion, letting children participate, seemed very challenging in practice and involved clashes of opinion between professionals, and between professionals and children. Generally, professionals seemed sceptical about the value of child participation, often attempting to circumvent it at best or actively avoid it at worst. Often child participation was talked away as being antithetical to children's welfare, as if participation itself was unsafe. In contrast, children who wanted to participate more than just giving 'wishes and feelings' to professionals anticipated the prospect of their participation as important to their welfare and blamed professionals when these opportunities did not materialise. This led me to seriously consider what professionals and children understood participation in public law proceedings to be.

When I completed a bachelor's degree in psychology with the Open University whilst still in practice, my focus turned more academically to issues around concepts of childhood and how these influence the ways professionals and children approach child participation. These developed to such an extent that I sought to research these ideas as my PhD thesis. What I became primarily interested in was how children and professionals involved in public law proceedings made sense of their practices/experiences of child participation, especially when these practices/experiences seemed to feel wrong so very often. I believed that using a discourse analysis approach might help reveal the tensions that promoted or hindered the practice of child participation and thus help us better understand the challenges professionals and children faced in making sense of child participation as beneficial.

1.3 Locating my Research within my ontological and epistemological perspectives

Willig (2006) contends that in order to be clear with our audience about the objectives of our research we should demonstrate a keen awareness of our own epistemological position, that is, how it is we are planning to go about gaining knowledge about reality. It is also important to be aware of our own ontological position, namely what we believe to be the nature of reality and its characteristics (Denzin & Lincoln, 2003). In this section I therefore make visible and locate my research in terms of its epistemological and ontological perspectives.
My research involves the study of people’s verbal accounts who whilst hailing from different cultural, social and generational backgrounds, share in common first-hand (professional or personal) experiences of public law proceedings, which they were prepared to share with me in one-to-one interviews. Given these individuals drew on multiple, nuanced and frequently, intensely affected versions of taken-for-granted ideas or dominant discourses around abstract concepts as child participation and childhood, I based my study on a social constructionist perspective. As a philosophical position, social constructionism posits a ‘radical doubt in the taken-for-granted world’ (Gergen 1985, p. 267) by challenging, disrupting and problematizing conventional positivist claims about universal truths, principles and processes to make visible their neglect of ‘otherness,’ difference and diversity (Burr, 2015).

Frost (2011) argues that research undertaken within a social constructionist ontology can lead to ‘real change’ (p67) by liberating the researcher from the shackles of taken-for-granted concepts and ideals embedded in static binary systems that tend to privilege or value one side over the other in Western societies: the rational over the emotional, mind over body, order over disorder, and leaders over followers. Importantly then, social constructionist research brings to the fore the significance of our social relationships and in so doing, exposes the taken-for-granted ways in which power is reinforced (Prout & James, 2015).

I situate myself epistemologically in the idea that ‘talk’ is mobilised by institutional and political interests and power relations. In doing this I build on the available literature to both challenge existing professional discourse that, as I will show, frames children in binary ways, and perpetuates dysfunctional versions of child participation that are nonetheless practiced/performing in public law proceedings. As a consequence, I argue that practices such as those embedded in public law proceedings carry material and affective significance for individuals and social groups in terms of the ways in which power and social hierarchies are constructed, understood and perpetuated. Drawing on Foucault (1969) who advanced that discourse consists of ‘practices that systematically form the objects of which we speak’ (p49) my thesis explores the practice of participation through the way those who are involved in it,
make sense of it. Hence I use discourse analysis to trace meaning-making and to better understand what taken-for-granted assumptions are implied and guide practice. Understood this way, discourse is not something that is neutral. It is socially and historically established and re-negotiated over time, across multiple arenas through the use of dominant discourses, which produce, shape and perpetuate what is socially acceptable, and indeed by inference what is socially unacceptable (Foucault, 1972, 1973). These are ideas I expand upon in chapter 3.

Accordingly, I am also concerned with how professionals and children might be affected by the discourses that are mobilized across public law proceedings to produce the closely controlled forms of child participation that perpetuate there. Whilst there has not yet been any research that focuses on the role of affect in relation to public law proceedings, some research has focused on the complex and contradictory ways of conceptualizing and regulating childhood to reveal the link between constructions of childhood and the relations of affective-discursive power that cut across childhood. In the context of her work around children’s participation in research, for instance, Alderson (2008) suggests that the ‘deeply held feelings’ (p142) such as professional mistrust in children’s reliability, competence or ability to think sensibly and concern for their vulnerability and potential to risky decisions to a lack of belief in their ability to collaborate in positive ways, that manifest for professionals impact children’s participation opportunities negatively. What this suggests is that professionals may be so profoundly affected by dominant ideas or discourses about childhood that they struggle to support children’s attempts to participate. Similarly, in their work Kraftl (2008) and Blazek and Kraftl (2015) highlight the challenge of separating thinking about childhood from the affect that manifests around those thoughts given childhood is imbued with adult aspirations for and fears about the future. Amongst others, Collins & Tymko (2015) and Jossart-Marcelli & Bosco (2015) have highlighted the potential restrictions to children’s freedoms when adults heed the evocative and affective call of childhood to press forward with decisions that are driven more by the heart than the head.

Thus, by drawing on Wetherell’s (2012, 2013) notion of affective practice and Stenner and Greco’s (2017) notion of liminal hotspots, my thesis illustrates how affect is always already
present; wrapped up in those moments of challenge, rupture, and capitulation as well as those moments of more relational forms of interaction that inform and shape meaning-making around child participation.

1.4 Key Concepts

Researching the topic of child participation in public law proceedings inevitably involves an exploration of a number of complex but key ideas and concepts, from which I draw across the academic literature spanning multiple disciplines: developmental psychology, social psychology, childhood studies, sociology and child law. Having briefly introduced my ontological and epistemological assumptions above, I use those ideas in this section to explore, critique and deconstruct the hegemonic ideas that give meaning to childhood and child participation, thereby locating my research in terms of my key concepts.

1.4.1 Constructions of Childhood

I argue that public law proceedings affords a pertinent arena in which to examine how certain ideas about childhood, children and their place in the world produce and perpetuate practice that mandates professionals as best placed to make decisions for and about children. In that regard, I position my research within the research literature from the last 30 years by problematising welfare and protection-based discourses that simultaneously frame children in ways that justify adult authority and guidance over them (Lee, 1999; Davies & Robinson, 2010), and downplay children’s agency and/or competence to act (Woodhead, 2005).

In what follows, I focus on what I consider the most dominant discourses that inform the academic literature namely the ‘Universal Child,’ ‘Childhood Innocence,’ the ‘Vulnerable Child,’ and the ‘Autonomous Child’. Where I can, I introduce links to the child protection/public law proceedings context. I also draw on the work of James and James (2008), James & Prout (2015) and McAvoy (2015) to argue that the dominant constructions of childhood I discuss below have assumed and perpetuate a status of taken-for-granted knowledge that is so powerful so as to rigidly shape the thoughts, beliefs and practices professionals have about
themselves and the children with whom they work. This includes the more insidious assumptions we see in my analysis chapters that frame some practices, such as ascertaining ‘wishes and feelings’ as right and others, such as children seeing evidence, as wrong.

1. The Universal Child

The discourse of the ‘Universal Child’ encapsulates childhood as framed by children’s development through its uniformity, normality and predictability (Prout and James, 2015). Inspired by the shift to thinking about the ‘natural state’ of order in evolutionary Darwinian terms Morss (1990) argued that this construction of childhood is rooted in scientifically-based approaches to universal development that privilege selection over variation. In that sense, this version of childhood contrasts with the prevailing view up until the time of the Renaissance, that I consider in the context of childhood innocence below, where, according to Heywood (2018) scant attempt was made to interfere with the ‘natural state’ of childhood (which at that time meant a period of infancy) because adult influence was perceived as a corrupting influence.

Nowadays, a number of models of child development co-exist, often developed by psychologists, which expound how childhood can be ‘known’ through charting and promoting natural and uniform stages of progression. Indeed, the profound impact major theorists in developmental psychology, such as Piaget (1886-180) and Bowlby (1907-1990) still have on educational and welfare practices remains a core discussion in the work of critical-developmental psychologists. Indeed, amongst others, Burman (2017) argues that Piaget’s ideas are the foundation stone for discourses expounding children’s lack of reason, competence, judgement and understanding. Notwithstanding the growing wealth of academic research and literature that has highlighted the extent to which his stages are unhelpful predictors of development, his stage theory approach to childhood cognitive development continues to inform educational and welfare practices, deeply embedding the association of age with stage. Key to the dominance of these ideas is not just the axiomatic use of age as a prognostic indicator, but how developmental psychology offers ways of approaching the child’s development linearly against a pre-determined trajectory towards the end goal of the rational,
thinking, adult being (Burman, 2017; Callaghan et al, 2015). When set against the gold standard of adulthood, childhood becomes a time of lacking; in competence, rationality, dependence, skill, ability and maturity. Crucially, this means that children are perceived in terms of potential as they are unfinished and incomplete: the beings of tomorrow but the mere becomeings of today (Lee, 2001). Furthermore, perceiving childhood as an upward developmental trajectory from unsophisticated to sophisticated, from lacking in skill to skillful, implies that in their competent state, adults have wisdom and skill that children lack, that entitles them to a privileged position over children. The inference is that whereas adults are entitled to be assumed to be competent, children must demonstrate that they are, thus building in further, often insurmountable obstacles for children who wish to be taken seriously (Lee, 2001; Moran-Ellis & Tisdall, 2019).

According to Burman (2017), amongst others, child development practices are not aimed at benevolently unfurling children’s potential but are practices that reflect societal and political preferences aimed at controlling, shaping and if required, changing childhood. Read this way, these models offer adults ways to think about children’s maturation according to stage-based norms that mandate adult-regulated processes of standardisation, monitoring, observation and assessment. James and James (2004) argue that overly deterministic or rigid accounts of children’s development place children in a ‘developmental straitjacket’ (p.190). This implies the silencing of children’s experiences, rationalities and competencies (Lee, 1999; Leeson, 2007; Warming, 2015). It explains why ordinarily, children cannot consent to or refuse medical treatment (Freeman, 2007) or why their assumed cognitive immaturity is seen to make their memories unreliable, which undermines their position as witnesses (Motzkau, 2007). Indeed, and pertinently for my research, James & James (2004) found that Guardians’ over-reliance on versions of Piaget’s theories (rather than what they actually are) had become so total that they substituted any informed practical assessments around the child’s capacity to participate and in the process restricted which children could speak, and if they could, what they could say and what Guardians could hear children say.

Similarly, and despite an equal volume of research that challenges the rudimentary principles of attachment theory (Burman, 2017), Bowlby’s (1951, 1973) assumption that the healthy formation of an attachment relationship, which for him was crucial for proper social and
emotional development, remains a popular and powerful ideology in Western societies. Indeed, Bowlby’s ideas remain an important tool by which professionals in child protection assess and monitor risks to children’s welfare as it is taken-for-granted that an unhealthy attachment style is associated with detrimental outcomes. In this regard, Holland’s (2010) finding that social workers rely more on their understanding of attachment theory (rather than what it actually is) to inform their risk assessments and planning outcomes for children than seeking the child’s actual views, is important. This finding resonates with the work of Stanley (2013) who found that typically, referencing psychology as ‘expert knowledge,’ transmuted the status of social work assessments into ‘evidence’ or ‘proof’ about children’s development, their needs, their competence and ability to participate. These findings are important because they suggest that applying psychology is a substitute for speaking to children and allowing them to participate in decisions about them.

When conflated with the professional mandate to protect children from harm, the perfidious consequences of the discourse of the universal child become even starker. In a recent scoping review of social work practices, Jensen, Studsrod & Ellingsen (2019) highlight how taken-for-granted ideas about the universal child as developing along a clearly charted and progressive, linear set of predictable stages have become so embedded in professional practice, often in oversimplified and value-laden ways, to create a generalized image of the non-universal child: the child ‘in need of protection,’ who is not capable of participating and sharing their important perspectives. Indeed, Tisdall (2017) posited in her work with child protection social workers that positioning children via such universal conditions of childhood renders children unable to act, consigning them to passively wait for adults to protect them. In that regard, Masson & Winn-Oakley’s (1999) findings resonate with the findings from social work research referenced above. The concern highlighted in their work with Solicitors and Guardians-ad-Litem was that by drawing on assumptions Solicitors had about the additional vulnerabilities of children facing public law proceedings (so in a sense, the non-universal child), they inadvertently stifled children’s participation. Importantly, these practices precluded otherwise competent children from instructing Solicitors directly and justified their continued representation by their proxy

10 now Children’s Guardians
professional, who spoke in their stead. Also pertinent to my research is the work of Parkinson and Cashmore (2008), which although relating to children involved in proceedings between the child’s parents (private law proceedings), highlighted how focusing overly on otherwise competent children’s vulnerability, undermines the importance those children place on greater participation in their own proceedings.

The message conveyed through the relevant academic literature is that children subjected to professional practices informed by theories and predominating ideas about the ‘Universal Child’ risk becoming little more than a set of symptoms in need of adult care. Crucially, the very powerful status of these ideas in relation to childhood risks occluding the very diverse and unique experiences children have and pertinently framing children who are deemed in need of protection as in need of protection from speaking. This is an important paradox as it is precisely in those moments when children wish to protect themselves or contribute to their welfare by talking, that their voice is stifled or silenced for fear of traumatizing them. These are ideas to which I return in my analysis chapters.

I now turn to another construction of childhood, which is also powerfully mobilised by ideas around protection: adults protecting children’s innocence from the corrupting nature of adulthood.

2. Childhood Innocence

Whilst historical constructions of childhood might contest the conflation of childhood with innocence, in some sources, ‘childhood innocence’ is linked with Rousseau’s rejection of the child as ‘original sin’ or Locke’s depiction of children as ‘tabula rasa’ (Heywood, 2018; Jenks, 2005), academics including Burman (2017) and O’Dell et al (2018) argue that it is these very ideas that paved the way for powerful modern notions of childhood innocence that infer that children are non-sexual, passive and powerless.

That said, critical approaches to childhood within both psychology and sociology have pointed to the mythological and contradictory nature of ‘childhood innocence’ as an historical and
cultural phenomenon, that positions children in binary opposition to adult authority and competence (Davies & Robinson, 2010), and frames how professionals respond to them and their needs (Parton et al, 1997). In the context of her work around child witnesses in criminal proceedings, Motzkau (2010) has argued that ideas about innocence promote professional practices, underscored by a ‘rush to protect’ and contribute to the framing of childhood in complicated ways that disadvantage children, who cannot be heard. In other academic literature, a similar ‘rush to protect’ is problematised as conflating the innocent child with depictions of childhood as ‘stolen’ or ‘lost’ (Parton et al, 1997) and children as ‘victims’, ‘damaged’ or ‘in need of saving’ (O’Dell, 2008). As these authors illustrate, these are powerful evocative images which, conjure up ideas of the innocent child as both lacking in agency or maturity and thus as being entirely dependent on adults for support and guidance. Simultaneously however, these images of childhood serve to undermine children’s chances to actively participate in their own protection, or to give credible opinions or accounts of their experiences.

A key concern for my thesis is that when tropes around ‘innocence’ are interpreted through protection-related discourses, they invoke a strong commitment and motivation, or urge, from adults to act in ways that simultaneously promote the child’s welfare and safeguard the child from harm. This is not a problem in itself and is both appropriate and admirable at that level. The problem arises when those actions, that I term the ‘urge’ or ‘compulsion to protect’, inadvertently cause harm, by setting in train a series of complex and entangled ideas that curtail or deny children’s participation in decision-making processes about them. I also suggest that the ‘compulsion to protect’ can carry serious consequences for children as it creates ambiguous positions for them as the unreliable arbiters of their own needs and experiences that stifle meaningful versions of participation. I return to these ideas again in my analysis chapters where I demonstrate the frustrations and anger proceedings-experienced participants expressed around practices that, inter alia, prevented them knowing important information about their proceedings, which they felt stifled their active participation.
Crucially, the academic literature demonstrates that the quest to preserve and protect childhood innocence can result in contradictory and undesirable outcomes for children by exposing them to harm and victimization. Indeed, for some children, the stigma of the ‘victim’ who needs saving, contradicts the ways in which children regard themselves. In her work around bullying, Sondergaard (2015) highlights how relinquishing the label of ‘victim’ can open up other more productive and beneficial ways for children to position themselves that are perhaps more socially inclusive. In academic work around cases of child sexual abuse, the research highlights the potential for children to feel misunderstood as the label of ‘victim’ misrepresents their own views about their experiences and actions (Lonne et al, 2008; Phoenix, 2002). For other children, their portrayal as ‘having lost their innocence,’ and thus their ‘child-ness’ or of not appearing ‘innocent enough’ sets them apart from childhood (Kitzinger, 1989; Burman, 2008a). This is a key paradox as it is precisely when children want to take charge and exercise agency that they run the risk of being perceived as less worthy of protection. Their lack of perceived co-operation sets them apart. In cases of sexual abuse, this can result in perceptions of pubescent girls as complicit in their own abuse (Phoenix, 2002). For some children, their very acts disqualify them as innocent and simultaneously as children. In her work around children who kill, for instance, Holt (2018) illustrates how some children become defined by the exoticism inherent in such deeds and positioned as being forever outside the realms of childhood.

In other academic research Lee (1999) has similarly argued that discourses that conflate innocence with deficits in competence, expose children to the double bind of the ‘vulnerability complex’ (p468) where the more vulnerable child is also the less competent child. Paradoxically, this means the more vulnerable (and perhaps victimized) a child is, the less likely it is their evidence is sufficiently cogent to prosecute the abuse they suffered, making their participation and consequently protection, nearly impossible.

What all these powerful social discourses of childhood innocence have in common, across the various contexts in which they resonate and to which all children become subjected, are that they operate to render childhood subordinate to adulthood and thus mandate adult authority.
over children’s lives, even more so where it is to protect them from harm. In that regard, it is important to understand the impact of conflating childhood with discourses of vulnerability.

3. The Vulnerable Child

Whilst innocence and vulnerability are often spoken about interchangeably, where childhood is concerned, discourses of vulnerability imply much more than just innocence; for instance, children in conflict with the criminal law are often not seen as innocent, because their actions are perceived as unusual but might be framed as vulnerable (Meyer, 2007). The problem is that when these discourses imply another, such as innocence or dependency and vulnerability, they exert an extremely powerful influence over the meaning-making process by implying a plethora of taken-for-granted assumptions about childhood. This is poignantly illustrated in O’Dell’s work around well-known charitable advertising campaigns. O’Dell (2008) argues that conflated notions of child vulnerability and dependency dominate the popular imagination to reinforce childhood as a time where children are in need of adult protection. Woodhead (2015) suggests that framing children in terms of their vulnerability merely perpetuates ongoing power structures, where adults dictate the extent of children’s dependence by deciding what constitutes ‘needs’. In that regard, O’Dell et al (2018) have argued that children who stand outside the dominant imagery of the innocent child, such as might be the case with working children, will still be positioned as vulnerable and dependent and mandated interventions because they still need to be protected.

Importantly for my research, Qvortrup (2005) suggests that framing children as vulnerable and dependent invites adults to treat childhood as a time for ‘special protection,’ care and support. However, he suggests that framing children through a need for ‘special protection’ perfidiously conceals the restrictions that accompany the interventions they justify. Whilst Qvortrup makes the case that children’s freedom of independent movement is curtailed by the good intentions of road safety experts keen to prevent child fatalities caused by egregious (adult) driving, his observations might, I suggest, be extrapolated to reflect the situation facing children who have come to the attention of child protection services. Indeed, policy initiatives in England and Wales refer to those children explicitly as ‘vulnerable children’ and ‘children in need’ implying
that they are in need of the extra (or special) protection that professionals provide via a whole host of monitoring and support practices aimed at reducing those needs and vulnerabilities. Thus, what is made visible in Qvortrup’s work and I suggest is pertinent for my thesis, is the significance of these powerful constructs operating in tandem to shaping what practices of child participation are (im)permissible. Importantly then, it has been argued (Lewis, 2010; Callaghan et al, 2016b; Burman, 2017) that by reinforcing adult assumptions about childhood through tighter rules and practices around protection, children’s voices, their autonomy and capacity to act (even where explicitly sought) become eclipsed. As Wendy Stainton Rogers (2009) expounds:

‘this is not just a matter of semantics: it has powerful practical consequences. Advocates of the ‘children’s rights’ discourse point out that the paternalism of the ‘children’s needs’ discourse allows adults to abuse the power it gives them. Within the ‘needs’ discourse, they contend, concepts like ‘children’s welfare’ and ‘the best interests of the child’ warrant actions towards children, that, in fact, serve adult interests’ (p150).

Also apposite to the arena of public law proceedings are those ideas about childhood that position children as vulnerable by virtue of their apparent unreliability, pertinently in the context of children who become, or wish to be witnesses. The literature highlights how a number of assumed vulnerabilities around their competence and credibility mean that child witnesses in family law cases have joined the cohort of ‘vulnerable witnesses’ who require ‘special protection’ from the ‘abusive nature of the criminal law’ process (Levy, 1991; 236). Building on those ideas but in the context of the criminal law, Motzkau (2007) highlights how children are constructed as unreliable witnesses by default, due to their association with childhood as a time of dependency, irrationality and thus susceptibility to manipulation. In a similar vein, James and James (1999) have argued that the vulnerability of age predisposes children to an examination of their experience by adults, in order to both test the coherence of their evidence and the scope for manipulation inherent in the child’s assumed dependency on, say, a parent. Thus, the mobilization of discourses of age, make it axiomatic to assume children lack agency and need
protection, hence justifying the imposition of barriers that are intended to detract from the harm of recalling specific experiences. Consequently James & James (1999) and Motzkau, (2007) demonstrate how children who wish to be witnesses face a twofold battle to do so: as both the vulnerable child and as someone whose words and the way they are conveyed, needs to be controlled by adults.

What we learn from the academic literature in the versions of childhood I have discussed thus far is that referring to psychological or protection-related discourses perpetuates dominant taken-for-granted understandings of what is appropriate, legitimate and normal practice. As a consequence, by drawing on different versions of childhood that are implicitly laden with discourses of power, protection and professional responsibility, institutions produce practices that exclude or marginalize children.

4. The Autonomous Child

In contrast to the more traditional ideas about childhood that I have considered above, stand sociological writings on childhood, which focus on their own vision of childhood as imbued with ideas about the diversity of childhood, agency across social contexts and the socially determined character of childhood. These ideas about childhood reflect wider beliefs about children as competent and active individuals; as ‘social actors,’ equal in status to adults, who might participate in matters affecting their daily lives, because they hold opinions that should be heard and taken seriously (James and Prout, 1990). The acknowledgment of children as ‘social actors’ is not the same as an acknowledgement of children as independent however, but merely an acknowledgement that they have been brought into view (Wyness, 2006): that they inhabit their social world more as ‘dependent beings’ rather than ‘dependent becomings’ (Lee, 2001). In consequence, Lee (2001) suggests that conceiving of the autonomous child not only lends itself to the re-interpretation of childhood, but also adulthood thus blurring the lines segregating children from adults, the naïve from the expert, the competent from the incompetent. As such, challenges to the dominant frameworks we have discussed above advocate change in the ways adults and children interact so that children can participate in more meaningful ways (Åberg and Taguchi, 2005/2018; James, Jenks & Prout, 1998;
Uprichard, 2008). Importantly within this body of work academics such as Kirby and Bryson (2002), Kjørholt (2002) and Smith (2007) challenge the marginalisation of children by advocating the extensive benefits for children, their families and society in terms of the contribution their participation makes to their wellbeing.

Key for my thesis is the swell of academic literature cautioning against professional practices where professionals tend to draw on these alternative notions of childhood in dualistic and mutually exclusive ways because to do so perpetuates an equally unhelpful either/or situation for children as it stifles opportunities to participate. In social work, Shemmings (2000) found that these competing ideas about childhood created ideological tensions for social workers that stifled imaginative ways of approaching child participation and inevitably restricted children’s involvement in child protection conferences. In the context of her work with Court Welfare Officers11 Trinder (1997) also found that the presence of these contradictory and competing constructions of childhood stifled more productive and effective ways for professionals to approach the idea of child participation simply because:

‘children are classified as either subjects or objects, competent or incompetent, reliable or unreliable, harmed by decision-making or harmed by exclusion, wanting to participate or not wanting to participate… Practice then becomes founded upon certainties, the perfected (single) procedure, based on the single perception of the child’ (p 301).

The concern for Neale & Flowerdew (2007) was that binary practices overlooked the ambiguity of childhood, where children can be simultaneously vulnerable/incompetent, and social actors. These are concerns that are receiving greater recognition in the field of child protection to highlight that whilst endowing children with agency can strengthen children’s credibility as experts in relation to their own lives, it simultaneously weakens their position as children who are in need of protection: that they have somehow crossed a line into adult territory and do not now qualify as children (see James & James, 2008). Similarly, the work of Eriksson (Eriksson, 2012; Eriksson & Nassman, 2008) illustrates how this ‘double-ness, or ‘ambiguity’ around

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11 Precursor to CAFCASS Officers who work solely in private law proceedings
children’s competence undermines their status as vulnerable. In that sense displaying competence in some way invalidates their traumatic experiences. Implicit in this argument is that child participation comes at a cost to children. The cost is that professionals will perceive them as incompetent and dependent and thus in need of protection, (including from the prospect of participation in decision-making processes about them), or as competent and independent and thus requiring no professional support and protection, (which also excludes them from participating in decision-making processes about them) but not more ambiguously as both. Their ambiguity implies that professional practices organized around thinking about childhood as a time of both competence but also vulnerability is unworkable. These are issues to which I return to in 1.4.2 below and again in my analysis chapters.

In this next section I consider how constructions of childhood have translated into dominant and contradictory discourses about child participation, which despite being well intentioned, make it difficult if not impossible to shape practices that simultaneously protect and hear children.

1.4.2 Constructions of Child Participation

Crucially, notwithstanding the lack of settled definition about what child participation is (Hemrica & Heyting, 2004), there is a sense across the academic literature that whatever it is, when it is done effectively, it is a good thing. This is because, assuming it were done effectively, child participation has been found to enhance children’s self-confidence, self-esteem and skills and bring children into focus in activities or processes where they had been invisible (Thomas, 2007) thus improving institutional services and decision-making (Lansdown, 2011; Alderson, 1993). Also pertinent for my research is the nexus highlighted in the academic literature between practicing meaningful child participation and practicing meaningful child protection (Lansdown, 2011). Understood this way, the importance of getting child participation right across child protection services cannot be underestimated.

1. Article 12: the Right to Participate
Child participation is considered key to recognising the importance of children’s rights and in that regard, it is crucial to consider how child participation is understood within the Convention\textsuperscript{12} which was ratified in the U.K. in 1991, the same year the Children Act 1989 was enacted.\textsuperscript{13}

Embraced as one of the Convention’s overarching ideas,\textsuperscript{14} child participation constitutes a powerful reference point for the multi-faceted way children are understood. As a consequence, Lansdown (2010) argues that child participation be seriously posited alongside the child’s more familiar rights to provision of their basic needs and protection from neglect and abuse: it is an important ‘right through which children can act to protect and promote the realisation of other rights’ (p. 17).

Article 12 states:

‘12.1 States Parties shall assure to the child who is capable of forming his or her own views, the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

12.2 For this purpose the child shall in particular be provided the opportunity to be heard in any judicial and administrative body, in a manner consistent with the procedural rules of national law’

Whilst ‘the right to participate,’ or the term ‘participation’ do not actually appear in Article 12 of the Convention, nor indeed, in any of its closely related provisions,\textsuperscript{15} ‘child participation’ is meant to resemble relational processes:

‘which include information-sharing and dialogue between children and adults based on mutual respect, and in which children can learn how their views and those of adults are...’

\textsuperscript{12} The United Nations Convention on the Rights of the Child 1989

\textsuperscript{13} The Children Act 1989 received Royal Assent on 16 November 1989 and was fully enacted by 14 October 1991

\textsuperscript{14} Alongside the ‘best interests of the child’ (Article 3), non-discrimination (Article 2), survival and development (Article 6)

\textsuperscript{15} Articles including the right to obtain and share information and freedom of expression (Article 13), freedom of association (Article 15), rights to information (Article 17) and freedom of thought, conscience and religion (Article 14).
taken into account and shape the outcome of such processes.’ (UN Committee on the Rights of the Child, 2009b: 5).

This guidance reinforces the core values of child participation to be that children’s views are valid and important and that consequently children should be involved in what can broadly be described as the decision-making processes that affect them (Lansdown, 2010). In that sense, ‘child participation’ is epitomized by the notion that children of all ages are vested with a level of social awareness and competence.

Anchoring the child’s right to participate in decision-making marks an important distinction to how children participate in their own proceedings in England and Wales, where child participation is implicitly and explicitly contingent upon adult interpretations of the child’s ability (Fortin, 2009). Given assessments of ‘capacity’ and ‘maturity’ are themselves contingent on powerful implicit discourses around childhood (developmental models and discourses around innocence, for instance), that serve to marginalise children’s views in favour of the more experienced professional view, they inevitably restrict what professionals set out to do, which is to access children’s views (Lee 1999; Motzkau 2010). In contrast, the Convention, does not define child participation as being contingent on any extraneous adult assessment: it is a right all children have. As Cairns (2006) makes clear whilst not affording children the right to decide, Article 12 does consolidate the view that the interests and views of all children are important, and that like adults, children are entitled to participate in social, cultural and political life. Thus, taken together, these ideas underscore the importance of children’s right to seek and receive information, a process Lansdown (2010) claims (and which we shall also see, distinguishes the Convention from the Children Act 1989) is fundamentally important to helping children make up their own minds about what they think and how they express themselves in decision-making processes.

2. Models of Participation

Other academics such as Hart (1992) and Shier (2001) characterise children’s participation through linear level models or ladders that recognise the existence of structural hierarchies that operate around the allocation of power between children and adults. Importantly, as part of his
'ladder of participation' Hart (1992) describes versions of non-participation or tokenistic participation, as processes where adults involve children but without really ascribing to listening to children or informing them and thus stifling children’s ability to effectively participate. It has been argued in the academic literature that tick-box formats (Malone & Hartung, 2010) or one-off projects of ‘limited, context-specific participatory mechanisms’ (Davis, Hill, Tisdall & Prout, 2006, 9) are versions of child participation that are tokenistic in nature. Thus, whilst these models have been criticised for imposing both an idealistic, sequential and hierarchical framework around particular conceptual attributes of child participation (Mannion, 2007; Malone & Hartung, 2010), such modelling does recognise children’s relative lack of power and vulnerability in relation to adults (Hinton, 2008; Mayall, 2002, 2006) and the tendency for participation to be tokenistic (Hart, 1992). These observations are especially pertinent because they remind us of the challenges children face in achieving what might constitute a meaningful version of participation in an arena that is over-populated by adults and under-populated by children whose lives are being decided there.

3. Agency

Dovetailing with the children’s rights literature and building on the ideas of sociology of childhood theorists are those academics such as Oswell (2013) who posit that in constructing their own worlds, children always already exercise and indeed have a right to exercise agency in relation to their circumstances. These ideas are important because they challenge typologies of child participation that place little weight on children’s views and actions and accordingly problematize how professionals filter what they can hear in ways that prevent children holding adults to account.

As a consequence, the academic literature that references agency as a theoretical construct to critically challenge the protective grip of adult practices is pertinent to my research, notably in terms of the contradictory ways in which adults construct agency and understand children to be acting agentically. Whilst it cannot be said that participation and ‘agency’ are entirely co-terminous, their close alignment can be attributed to how children’s active participation is perceived to reflect their capability to exercise agency (Wyness, 2015). Yet, as outlined in
section 1.4.4 above, being described as agentic brings the peril of being perceived ‘less of a child’ and implicitly less deserving of protection, taking us back to the deeply embedded ambiguities that surround children’s positioning more broadly (Tisdall & Punch, 2012; Callaghan et al, 2016e). Academics such as Lansdown (2010) and Thomas (2007) have described these typologies as akin to consultation processes, which as we shall see in my analysis chapters, is a description to which proceedings-experienced participants might ascribe the processes of giving their ‘wishes and feelings’ to their Guardian and/or Social Worker.

However, the views of childhood theorists that advocate child autonomy have equally been criticised by Mannion (2007) amongst others, for failing to hold adults in the contextual frame by becoming too child-focussed and adult-reductive. As Lee (2001) or Oswell (2013) highlight, over-emphasising children as ‘beings in their own right’ perpetuates the similarly mythical idea implicit in the dominant paradigm around the autonomy and independence of ‘adulthood.’ Indeed Oswell (2013) ventures that the adult preoccupation with how children demonstrate agency occludes the real problem, which for him is located in the structural and cultural limits society imposes on children’s agency generally. The very modest aim he propounds is to untether childhood from the shackles of non-agency rather than aiming for the mythical agentic child. Thus, declaring children autonomous and removing adults altogether is an unrealistic prospect, also. This leads me to turn now to consider more relational approaches to child participation.

4. Relational Approaches to Child Participation

Understanding agency as relational means understanding agency as something that ‘comes about’ in and through participation in social interactions (Esser, 2016). For Oswell (2013), ‘the capacity to do or to make a difference’ (in other words, the capacity for agency) was inevitably something relational because it was ‘always in between and interstitial… dispersed across social relations’ (p290). This is important because it provides a lens by which to understand children in relation to the wider dynamic and contextual frame that shapes, enables or restricts their ability to act (Spyrou, 2018). In that sense, agency is not some innate capacity that can
be lost or gained: it is something that is negotiated with others as they interact in different contextual frames.

From a relational perspective, children are understood as involved and invested in the construction of their own worlds, just as adults, and in that sense, occupy and operate in interdependent spaces where they relate with other people, with artefacts, materials and technologies. It is these dynamic, ‘heterogeneous networks of agents or actors’ (Oswell, 2013; 16) or ‘inter-generagency’ (Leonard, 2016; 9) that afford the ‘opportunities, constraints and locations’ in which agency is shaped and enacted (Leonard, 2016; 150). Similarly, Klocker (2007, 85) highlights the relational quality of agency, where specific contexts, structures and relationships act as dynamic ‘thinnings’ or ‘thickenings’ where:

‘Thin’ agency refers to decisions and everyday actions that are carried out within highly restrictive contexts, characterised by few viable alternatives. ‘Thick’ agency is having the latitude to act within a broad range of options. It is possible for a person’s agency to be ‘thickened’ or ‘thinned’ over time and space, and across their various relationships.

Relational approaches seek to both blend and distinguish the child/adult dichotomy: one that simultaneously holds the child and adult in the contextual frame and recognises the messiness or indeed opaque nature of child participation through generational relations (Leonard, 2016; Spyrou, 2018). Thus, children’s opportunities to participate in decision-making might inevitably expand as adults and children negotiate the interdependent space they occupy (Callaghan et al, 2016e).

Recently, some children involved in private law proceedings have received letter communications from their Trial Judge. One such occasion, has been reported in the Law Reports,16 (and been hailed across the legal profession as an important step forward in bringing children into their proceedings). It relates to a 2017 High Court case where Jackson J (as was) delivered a Judgement, in the form of a letter to the child ‘Sam’ directly. There had been very

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16 A (Letter to a Young Person), Re (Rev 1) [2017] EWFC 48 (26 July 2017)
protracted proceedings between Sam’s parents about his living arrangements involving a number of previous applications (including those made by his father to take him to live abroad) dating back to before Sam began school. Over those years, the Judge had become well acquainted with Sam. Aside from reading about his circumstances from the perspective of the adults, the Judge had statements from Sam and had heard about him directly from his own Solicitor in these most recent proceedings. The Judge also met him in person and saw him give some evidence. The Judge had organised it so that he asked Sam the questions his parents wanted to ask, which meant Sam and the Judge had the chance to speak directly about the issues in his case. I suggest that as a result of the opportunities they had, through his participation, the Judge was able to provide Sam with the information he needed to make sense of a difficult Judgement, where the Judge explained why he could not follow his wishes. Despite what seems to have been a meaningful experience for the Judge at least, that more relational version of participation has not become commonplace in the sense that children are not being invited more regularly to participate in their own proceedings in any of the ways that happened here. This perhaps hints at the depth of resistance that exists to child participation in public law proceedings.

Arguably then, balancing the discursive tensions, which I suggest are inherent in the Children Act 1989 around paternalism, child and parental rights, and parental and State responsibilities, continue to present a practice conundrum for those meant to realise any versions of child participation meaningfully. Thus instead of being understood as inter-related ideas that are negotiated between children and professionals, the notions of participation and protection often end up perceived as the antithesis of the other (Fortin, 2009; Burman, 2017). Indeed, it is this antithetical positioning that has led researchers in the field of child protection to conclude that the idea that children possess rights of participation as well as rights to protection and provision, presents an enormous, ongoing challenge to both policy and practice development (see van Bijleveld, Dedding, & Bunders-Aelen, 2015; Vis & Thomas, 2009). This is more so where the tendency to equate the theorisation of child participation with particular typologies or models, fails to appreciate, or address, the vast dissonance that frequently exists between theory and practice (Freeman, 2000, Hanson and Nieuwenhuys, 2012).
The ‘paradox of participation’ is the term I use to highlight the disposition towards universal and generic assumptions about childhood and welfare in public law proceedings, resulting in practical and theoretical tensions, contradictions and challenges, which make it difficult to define, develop and practice child participation in a meaningful less hierarchical way. Instead, practices marginalize children who appear either too confident because professionals are sceptical children are voicing their own views, or they are silent or compliant and presumed to have no views or indeed any other views that might contradict those of the professional. Instead, I argue that despite the best intentions of the professionals and children involved, the increased versions available for child participation in public law proceedings have not so much resulted in effective or meaningful participation as ineffective and affect-laden participation. Further, I argue that those dominant and hegemonic discourses that draw people to certain interpretations or taken-for-granted assumptions about children underpin the incompatibility that exists between the notions of participation with protection. This is due in part to the distinct ways in which concepts such as competence versus incompetence, vulnerability/innocence versus independence/agency, rational versus emotional and universal versus unique experiences are mobilised to frame childhood/adulthood and child/professional participation in dichotomous ways that occlude the dynamic and dialogical interactions that take place between children and professionals. I also demonstrate that the paradoxicality of these practices comes at a distinctly personal cost for professionals and children alike: a cost that becomes evident in the affective discursive expressions (Wetherell, 2012) that participants used to voice, relate to or otherwise deal with the discomfort these paradoxes cause.

In the next section I contextualise my research by looking briefly at the child protection system in England and Wales and the role of public law proceedings within that.

1.5 An Outline of Public Law Proceedings in England and Wales

Applying for any public law Order is ordinarily a step of last resort and only embarked upon when other child protection processes, including alternative care arrangements17 and services such as family support or parenting programmes are deemed insufficient to meet the welfare

17 Including under S20 Children Act 1989
needs of children. Inevitably this means that social workers and families have already undertaken a significant body of work during the ‘pre-proceedings stage’. I outline those processes and the opportunities children have to participate in them in subsection 1 below. Following that, I outline the child protection processes to which children become subject if Court proceedings become necessary, before focusing attention on the versions of participation theoretically available to all children in those proceedings.

1.5.1 The Pre-proceedings Protocol

Despite the emphasis in child protection that advocates that ‘delay [is] prejudicial to the child’, the lack of timescales in pre-proceedings often results in open ended and cyclical attempts by professionals to continue to work with parents (Masson, 2017). As we shall see, in contrast to public law proceedings themselves, the pre-proceedings timetable can be a more protracted and difficult process for those involved to follow or understand. In part this is because, as depicted in Figure 1, families can change process, depending on how well (or not) professionals assess progress. The pre-proceedings process can therefore take weeks, months or years.

The assessment pathway options for families are set out on Flowchart 1 below. The pathway a family is allocated will depend on strategy decisions taken by Local Authority professionals about the levels of risk posed to children. ‘Safeguarding procedures’ are implemented to manage the more serious risks to children. It is ordinarily only when safeguarding procedures have been implemented, which might occur immediately or as a consequence of increased knowledge about the family through multi-agency meetings that matters might escalate to Court proceedings. ‘Child in Need’ procedures are implemented when professionals identify gaps in a child’s development or health that they wish to monitor so as to prevent a child suffering significant or further significant harm.

As is evident from Figure 1, social workers hold more meetings about children, when they have safeguarding concerns. However, escalating professional concerns does not necessarily result

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18 s1(5) Children Act 1989  
19 s47 Children Act 1989  
20 s17 Children Act 1989
in an escalation of child participation; indeed to the contrary. Children are not, for instance, ordinarily invited to Case Conferences or safeguarding meetings (Cossar & Long, 2008), which means children only participate in these processes by giving their ‘wishes and feelings’ to their Social Worker in advance. That professional then conveys the child’s ‘wishes and feelings’ to the other professionals and parents who attend the Safeguarding meetings. When this is placed in the context where children also have no access to convened Legal Planning Meetings or legal advice at any stage, we can see how children might already feel marginalized at the outset from their own proceedings as they already feel excluded from the information-sharing that takes place during the pre-proceedings stage and consequently from planning and decision-making.

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21 s17, 20, 22 and 47 Children Act 1989 all provide for the Local Authority to ascertain the wishes and feelings of the child in relation to the action or provision of services being offered
Figure 1 - Pre-Proceedings Flowchart

Initial Assessment

Safeguarding Concerns
  - Strategy Discussion
    - Section 47 Enquiry
      - Commence Core Assessment
        - Child Protection Conference
          - Complete Core Assessment
            - Child Protection Review
              - Legal Planning Meeting if s31 threshold appears to be met
                - Threshold Met
                  - Immediate Decision to apply for Care/Supervision order
                    - Meeting to discuss Letter Before Proceedings and agree how to safeguard Child. Parents and Solicitors provided with new plan and details of action to be taken to safeguard child if plan is not followed.
                      - Commission Specialist Assessments
                        - Review Pre-Proceedings Plan and the Need for Court Proceedings
                          - Yes
                            - Review
                          - No
                - Delay issuing and send Letter Before Proceedings
                  + Remain or become subject to Child Protection Plan

Children In Need Concerns
  - Core Assessment
    - Children In Need Meeting
      - Review of Child In Need Plan
1.5.2 Public Law Court proceedings

The Public Law Outline (PLO) has been in operation since 2014. It provides the timetable or framework for all cases where the Local Authority applies for Care or Supervision Orders. Prior to that time, public law proceedings followed a similar iterative process to pre-proceedings in that professionals were more tolerant of delays that could be justified as beneficial to children. In practical terms this meant that whilst the process was more flexible than the PLO, it was one that could last for a year or longer.

Before I consider the PLO in some detail, it is important to note that once the State makes an application for a public law Order, the Judge may dispose of the proceedings by making any Order from a raft of available Children Act 1989 Orders. This means that the final Order might not necessarily be that which was originally sought. Crucially, whatever Order the Judge makes must be one that is justified in accordance with the ‘welfare principle.’\textsuperscript{22} In that regard, the Court must make the Order that most meets the assessed welfare needs of the child. As I go on to discuss in chapter 2, what constitutes ‘welfare’ and who is entitled to speak about ‘welfare’ is therefore very important.

Under the PLO, it is expected that all steps set out in Figure 2 will be completed within 26 weeks from issue. This involves the adult parties, guided by their respective legal teams, meeting a series of crucial stages during proceedings, which are organized in the flowchart at Figure 2 (stages 1 – 4). Initially the focus is on securing children’s most appropriate (and by appropriate I mean protective) placement. These applications can be listed very quickly, and it is not unusual for Guardians to struggle to find and instruct Solicitors in the time provided. The implication is that there is very little prospect of including children who might be competent to instruct a Solicitor in this very important Hearing.

The focus then turns to the gathering and preparation of evidence. During this period there will be at least one Case Management Hearing where the Court will timetable the filing of evidence and any necessary expert assessments. If there is a dispute between the State and other (usually the parent) parties, over an especially salient aspect of the proceedings, such as the

\textsuperscript{22} Section 1 Children Act 1989
culpability of a third party for a non-accidental injury to a child, the Court might organize another early Hearing so as to determine the factual matrix relating to that injury. In that example, if a third party is responsible, the Court might require different types of welfare risk assessment to those where a parent were found responsible.

Once the evidence is available, the Court provides an opportunity, at Stage 3 of the proceedings, for the (adult) parties to reach early consensus about the care arrangements (known as a care plan) for the child. If no consensus is reached, there will be a final Hearing, where a Family Court Judge who specializes in public law proceedings, will make a decision.

There is no formal point during this process where attention focuses on children’s participation. As a result, matters relating to children’s participation are fitted in to these other Hearings where they might evolve as side issues warranting further assessments and Hearings. As we shall see, if the Court is being asked to permit children to attend Court to give evidence, or to hear evidence, or to attend a Judge’s Meeting with Children, there are specific guidelines and assessment procedures that need to be followed.

There are other types of proceedings, not governed by the Public Law Outline, but through which the State can seek Orders that organize the child’s removal from their family and as a result are included in my definition of public law proceedings. Under the Children Act 1989, both Secure Accommodation Orders \(^{23}\) and Emergency Protection Orders \(^{24}\) can be used separately to or during care/supervision order proceedings, to alter a child’s living arrangements for specified periods of time.

In contrast, Adoption and Placement Order applications are not proceedings governed by the Children Act 1989 and hence for the purposes of this research, any matters pertaining to child participation in those proceedings, such as the child’s attendance at Celebration hearings, \(^{25}\) are not included.

\(^{23}\) where a child can be removed usually into secure residential accommodation for 3 months in the first instance, and if renewed, for consecutive periods of up to 6 months

\(^{24}\) emergency removal of a child for a maximum of 8 days in order to protect them from imminent harm

\(^{25}\) after an Adoption order is made, the new family attends Court to meet with the Judge
Figure 2 - Annotated Public Law Outline 2014 (26 weeks)

**Stage 1**
Timetable contested Interim Hearing for Care/Supervision Order or list an urgent preliminary Case Management Hearing

- Court immediately issues applications for care/supervision Order (s31) and alerts Cafcass

- Not before Day 12 and no later than Day 18

**Stage 2**
Case Management Hearing ASAP and no later than day 25
- If required, Further Case Management Hearing
- If required, Fact Finding hearing to be listed and evidence timetabled

- As directed by the court

- Children’s Guardian files Initial Analysis report for Case Management Hearing, including evaluation of Local Authority’s case

- Court sets timetable for filing evidence, including evidence from expert(s), (psychological, psychiatric, medical, educational expert evidence) if the Court deems it is necessary

- Timetable set to meet the child’s perceived needs (Local Authority and Children’s Guardian input) and the 26 week limit for proceedings.

- Court to consider possible extension of timetable and to justify why case will take longer than 26 weeks to conclude

- Local Authority files Final Evidence and Care Plan and parents respond to this

- Children’s Guardian files final Case Analysis

**Stage 3**
Issues Resolution Hearing, where the Judge can make final Orders if there is consensus between the parties about outcome.

- By week 26 or earlier

- If there is no consensus between the parties, the Judge timetables the application to final hearing. If the proceedings exceed 26 weeks, the Court must justify the extended period.

**Stage 4**
Final Hearing, if necessary.
1.5.3 Versions of Child Participation in Public Law Proceedings

With a rye Orwellian humour, Lynn Davis (2007, 65) suggests that when it comes to participation, ‘some parties are more equal than others.’ What this means is that in contrast to the adult parties, children have no automatic right to participate in their own proceedings in ways adult parties can take for granted. Whilst I expand on the reasons for why this might be the case in chapter 2.2, it is important to note here that despite the mechanisms for child participation that I outline in this section, very few children currently instruct their legal representatives directly, or attend Court, or see the evidence, or give evidence in person in Court. Most child participation is limited to giving ‘wishes and feelings’ to proxy professionals, (a process I have termed professional participation), supported in many cases by children writing a letter to the Judge. Increasing numbers of children might now be attending a Judge’s Meeting with Children as well. To all intents and purposes it is the Court appointed Guardian who acts as the child’s eyes, ears and voice throughout the duration of the proceedings, and who will speak about their welfare needs in the child’s absence in Court.

I now turn to the versions of child participation available, in theory, to all children. This supplements those observations I made in section 2 above about the versions of child participation available to a small number of ‘Gillick competent’ children.

In theory, there is actually no legislation in force preventing children attending Court Hearings; indeed the Rules seem to assume their presence.26 Interestingly, however case law in this area

26 Rule 4.16 Family Proceedings Rules 1991 and R12.14 Family Court Rules 2010: Attendance at Hearings, which says: (1) ……
(2) Unless the court directs otherwise and subject to paragraph (3), the persons who must attend a hearing are—
(a) any party to the proceedings;
(b) any litigation friend for any party or legal representative instructed to act on that party’s behalf; and
(c) ……
(3) Proceedings or any part of them will take place in the absence of a child who is a party to the proceedings if—
(a) the court considers it in the interests of the child, having regard to the matters to be discussed or the evidence likely to be given; and
(b) the child is represented by a children’s guardian or solicitor.
(4) When considering the interests of the child under paragraph (3) the court will give—
(a) the children’s guardian;
has developed in ways that actively circumvent and preclude most children’s attendance, limiting the routine practice of participation as professional participation, via their reporting of children’s ‘wishes and feelings’. Similar challenges face children who wish to be witnesses. Once again, case law prescribes a balancing test, by which the professionals (the Guardian usually) weigh up the benefits for/against children giving evidence. As we shall see in my analysis chapters, by focusing on child protection, professionals struggle to identify any benefits for children from the activity of speaking as a witness, which makes the activity of children being witnesses a challenging practice for everyone. There are other, more circumscribed (and limited) ways professionals support children to participate. Some children attend a Judge’s Meeting with Children where their Guardian and/or Solicitor might show them around the

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29 Guidelines for Judges Meeting Children (2010) 2 FLR 1872, which state:

1. The Judge is entitled to expect the lawyer for the child and/or the Cafcass officer:
   (i) to advise whether the child wishes to meet the Judge;
   (ii) if so, to explain from the child’s perspective, the purpose of the meeting;
   (iii) to advise whether it accords with the welfare interests of the child for such a meeting take place; and
   (iv) to identify the purpose of the proposed meeting as perceived by the child’s professional representative’s.

2. The other parties shall be entitled to make representations as to any proposed meeting with the Judge before the Judge decides whether or not it shall take place.

3. In deciding whether or not a meeting shall take place and, if so, in what circumstances, the child’s chronological age is relevant but not determinative. Some children of 7 or even younger have a clear understanding of their circumstances and very clear views which they may wish to express.

4. If the child wishes to meet the Judge but the Judge decides that a meeting would be inappropriate, the Judge should consider providing a brief explanation in writing for the child.

5. If a Judge decides to meet a child, it is a matter for the discretion of the Judge, having considered representations from the parties —
   (i) the purpose and proposed content of the meeting;
   (ii) at what stage during the proceedings, or after they have concluded, the meeting should take place;
   (iii) where the meeting will take place;
   (iv) who will bring the child to the meeting (this should usually be the Cafcass officer);
   (v) who will prepare the child for the meeting (this should usually be the Cafcass officer);
   (vi) who shall attend during the meeting – although a Judge should never see a child alone;
   (vii) by whom a minute of the meeting shall be taken, how that minute is to be approved by the Judge, and how it is to be communicated to the other parties.

It cannot be stressed too often that the child’s meeting with the judge is not for the purpose of gathering evidence. That is the responsibility of the Cafcass officer. The purpose is to enable the child to gain some understanding of what is going on, and to be reassured that the judge has understood him/her."
Court building before the Judge meets with them. Once again, there are strict Guidelines regulating what Judges may or may not say or discuss when meeting children. Importantly, being cautioned against referring to the child’s case in any way means, as we shall see, that those opportunities to participate have limited meaning and value. More frequently children are encouraged by professionals to write a letter to the Judge, which the Guardian or Social Worker then brings to the Judge’s attention. There is no official opportunity for feedback to children, which as we shall see, causes children to be unsure who, if anyone, might have read that letter.

Whilst all these versions of participation supplement or expand children’s ‘wishes and feelings’ as given to professionals during the course of their proceedings, none of these versions of participation are mutually exclusive. I illustrate what I mean by providing a synopsis of the versions of participation my proceedings-experienced participants spoke about during interview which supplemented giving ‘wishes and feelings,’ to demonstrate the breadth and by implication, the limit of possibilities. Estelle spoke about her experiences of instructing her Solicitor and attending parts of her final Hearing to hear evidence, and then give evidence in Court. She saw some but not all of the evidence that was filed in her proceedings. Cora and Hope wrote to the Judge. Both were refused the opportunity (30 years apart) to meet with the Judge and were limited to giving their ‘wishes and feelings’ to professionals. Kaya and Layla each attended a Judge’s Meeting with Children. Kemi gave evidence in the Crown Court but was refused an opportunity to meet with his Family Judge, while Vicki was refused all forms of participation aside from giving her ‘wishes and feelings’ to professionals.

In the next section, I identify how my research remedies a significant gap in what is known about child participation in the context of child protection as practiced in public law proceedings. In doing so, I focus on what the issues might be, and how these have informed my research questions.
1.6 The Scope of My Research: Gap in Knowledge

Significantly, much of the child protection research has been limited to aspects of pre-proceedings and as such has not specifically examined the role of child participation within the child’s own public law proceedings that inevitably follow unsuccessful child protection interventions. Moreover, within the context of pre-proceedings, research has, to date, primarily focused on social work practices and not on the experiences of the children with whom these professionals work (Broadhurst et al, 2010). Within the context of child participation in Children Act proceedings, research has focused primarily on private law work (Holt, 2016), that is, on proceedings where the State is not formally involved. In part this gap in the research can be explained by the difficulties that exist in accessing children who have participated or wanted to participate in their own proceedings, which is a topic I return to in chapter 4. That means that the participation-focused practices of professionals working within the constraints of institutional structures trained and operating in that intersecting arena where child protection looms large in Court proceedings has been largely over-looked.

Where research does exist in that arena, (Sawyer, 1999; Masson & Winn-Oakley, 1999; McCausland, 2000; James & James, 2004; Brophy, 2006), there has been a tendency to focus on the perspectives of only one cohort of professionals. This means a significant gap exists in the research around the role and influence of the children subjected to their own public law proceedings, and significantly in how child-professional relations influence and affect their experiences of child participation. The study of child participation in public law proceedings, largely through a disparate and patchy examination of the views of professional groups tends to miss, I suggest, the messy dynamics shaping and affecting the multiple professional relationships children and professionals have to concurrently manage in the context of both child protection and child participation within that arena. Of course, some children prefer not to participate at all, but nevertheless, the research literature makes it clear that it remains as critical for them as for those children who do, that they make informed choices about whether and how they might wish to participate (Lansdown, 2011; Tisdall, 2015).

I believe my research interest remedies these lacunae in that this research specifically focuses on the ways children and professionals understand, engage with, experience, and are affected
by what they understand child participation to be, as revealed in their talk. I am looking to understand how, despite professionals being cognisant with the versions of participation available and policies surrounding them, some versions of participation have become the default or ‘go to’ versions, (such as giving ‘wishes and feelings’ to professionals and writing letters to the Judge) whilst children rarely access or use others, such as instructing their own Solicitor, attending their own Hearings, seeing the evidence and/or being a witness. I explore what it is about child participation that drives professionals to actively avoid some versions of child participation and why it is children and professionals seem so very confused, uncomfortable and troubled with their practices/experiences of child participation. These are important problems that need addressing because it seems to me that the existing system is not working.

With that in mind, it is crucial to investigate how children and professionals make sense of the idea and purpose of child participation as a practice in public law proceedings; why children seek to do it, how professionals facilitate or support it, or not and how professionals and children make sense of their practices/experiences of it and at what cost. I formulated the following four research questions with those issues to the fore. These questions facilitate an exploration of the conflicts, tensions and ambiguities that arise in participants’ talk about child participation, child protection and childhood, which are difficult to resolve or reconcile and thus create paradoxes of participation. I examine the affect of child participation discourse for professionals and proceedings-experienced participants in chapter 7, where I respond to research questions 3 and 4. Here, I explore how my participants make sense of being caught up in and for some, living with, the paradoxes caused by the discourses available to them in relation to child participation.

The research questions I explored in this research are as follows:

1. How and to what effect do professionals construct ‘childhood’ and ‘child participation’ in public law proceedings?
2. In relation to their experiences of being subjects of public law proceedings, in what ways and to what effect do proceedings-experienced participants talk about ‘childhood’ and ‘child participation?'
3. What do professional participants’ expressions of affect reveal about discourses of child participation practice in public law proceedings?

4. What do proceedings-experienced participants’ expressions of affect reveal about discourses of child participation practice in public law proceedings?

1.7 Thesis summary

This thesis is organized into eight chapters, the first of which is this Introduction. Excluding this chapter, I organise my chapters as follows:

Chapter 2: Situating Child Welfare, Child Participation and Childhood in Public Law Proceedings: In chapter 2, I look more closely at how notions/concepts of welfare have changed over the past 200 years and come to shape our understanding of ‘child participation’ and ‘childhood’, in circumstances where, as a last resort, the State asks the Court to protect children from the risk or existence of ‘significant harm’. Drawing on the literature across the intersecting fields, of psychology, sociology, social policy and law, I discuss the background and history of these concepts to argue that the concept of child participation has become entangled theoretically and practically with certain notions of childhood and welfare. Further, I argue that inherent in these entanglements of childhood and welfare are a series of consequences for professional practice and childhood experience in relation to children's participation.

Chapter 3: Theoretical and Methodological Influences: Discourse and Affect. The aim of chapter 3 is to set out the theoretical ideas I have drawn upon to investigate child participation in public law proceedings. I look at some of the ways Foucault and those influenced by his work have theorised the social and individual effects produced by institutional practices and highlight how those ideas are important to my research context. I extend those ideas to focus on academic literature that has looked at affect. By drawing on the work of Wetherell and other affect theorists influenced by her work, I look at how affect reveals something about people's

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30 s31 Children Act 1989
experiences: how they make sense of, or in some way remain trapped, suspended or otherwise unable to move on from those experiences. I also highlight why these theoretical ideas are important to my research in terms of drawing attention to challenges facing the affective-discursive subject.

**Chapter 4: Research, Design and Data Analysis.** The focus of chapter 4 is to account for the methods I used to collect, transcribe and analyse data, and to do so in ways that foregrounded research ethics. I also provide a pencil profile of each participant.

**Chapter 5: The Discourses of Childhood and Child Participation drawn on by Professional Participants.** I address my first research question by focusing on how professional participants spoke about and constructed childhood and child participation and the consequences of that. I present findings that show that professionals draw on common discourses relating to children and participation, which were deeply protection-related. The three discourses I found that predominated their talk about childhood are the ‘Essential Child,’ the ‘Care Proceedings Child’ and the ‘Ambiguity of Childhood.’ I also found that professionals predominantly drew on three discourses in their talk about child participation, those being the ‘Illusion of Participation,’ ‘Participation as Formulaic’ and ‘Participation as Disruption.’ As my analysis demonstrates, professionals are quite careful to avoid unsettling the integrity of these discourses, because troubling them involved a significant cost to professional practice. However, maintaining professional integrity at any cost involved professional participants wrestling with what I term the paradox of participation: where some versions of child participation, as construed by professionals, were talked out of existence as inherently incompatible with their notion of protection-focused practice. Consequently, in moments where there was potential for these participants to question child participation practices, I found the opposite. Instead, these participants worked discursively hard to restore or maintain the cohesive appearance of these practices by ignoring them, glossing over them and shirking them off. These discursive practices were necessary as they ultimately enabled professional participants to maintain and legitimate their own professional competence as child protectors and rescuers, which was vital to their ability to carry on in practice.
Chapter 6: The Discourses of Childhood and Child Participation drawn on by Proceedings-Experienced Participants. I address my second research question by examining how proceedings-experienced participants speak about their experiences of participation in their own proceedings, and the consequences of those experiences, for them. As the analysis demonstrates, all proceedings-experienced participants described the significant cost to them of being subject to professional discourses that foregrounded their protection, often at the expense of their participation. In that sense, despite their sophisticated but theoretical framings of their experiences through ideas or repertoires of agency, autonomy and competence that might work in an interview setting to challenge the dominance of protection-focused discourse in public law proceedings, these were not ideas that they perceived as affording them an especially successful outcome in practice. I present data then that illustrates the commonality of discourses recruited by proceedings-experienced participants to describe the consequences of having been children subjected to professional-led practices of protection dominating public law proceedings, which are the ‘Pragmatic Child,’ the ‘In/Audible Child’ and the ‘Care Kid.’ Similarly, when speaking about their actual experiences of child participation, these participants again drew on ideas about the child’s voice and agency to problematize the often limited versions of participation to which they had access, through discourses of ‘Participation as Marginalising,’ ‘Making my Participation about Me’ and ‘Welfare-through-Participation.’ In that regard, proceedings-experienced participants also highlighted the paradox of participation that no matter how hard they challenged the professional discourses that they felt framed them in unhelpful ways, they rarely felt they had actually participated in ways that were helpful or meaningful to them. In fact, the harder they tried to participate, the less they felt heard or considered worthy of being listened to.

Chapter 7: Affect and Child Participation. I turn here to my final two research questions and use Wetherell’s discursive affective tools and the concepts of liminal hotspots and homeless affect to examine those moments when affect bubbled to the surface in participants’ talk. I found that the way participants used affective practices was diagnostic of moments when the paradoxes of participation, discussed in chapters 5 and 6, seemed to be overwhelming to them. The expressions of affect articulated by professional participants revealed the struggle they
have in both thinking about and practising child participation. Indeed, their expressions serve to highlight the paradox where some professionals outright reject some versions of participation as asking the impossible, even when they know they can be called upon to do exactly what they resist: to support versions of child participation that they perceived as corroding their role as protectors (‘Crossing the Line: Wrestling with Discomfort’). For those who supported versions of child participation, affect was articulated to show how just doing their job meant experiencing the collapse of their own professional practice (‘Can’t do Right for doing Wrong’).

In either scenario, professional participants made sense of child participation as very unsatisfying and fraught with risk for them professionally and personally. The expressions of affect articulated by proceedings-experienced participants revealed the anger and frustration of being subjected to the hegemonic discourse of welfare-through-protection that shapes professional child participation practices. ‘The Burden of being Rescued from Participation,’ is a term I use to illustrate the distress proceedings-experienced participants articulated to reveal their experiences of participation as meaningless or non-existent, so oppressive was the burden of protection-focused practices for them. ‘The Burden of Participation: Tricked and Trapped,’ relates to those experiences of participation where these participants felt tricked into a version of participation that was meaningless, unhelpful and did not fulfill their expectations.

Both these versions of participation were expressed as deeply detrimental to their welfare in both the short and long term.

**Chapter 8: Concluding Observations.** I return to my research questions to argue that the practice of child participation in public law proceedings is a far from straight-forward process. This is because it is deeply influenced by hierarchical relations of power that grip professionals and children alike to mandate protective practices so effectively so as to talk some versions of child participation out of existence. This means that child participation is paradoxical as the versions of child participation professionals expressed as unhelpful and un-protective were precisely those that proceedings-experienced participants perceived as helpful, meaningful and as contributing to their sense of well-being and protection. I focus on the potential for more relational approaches to child participation and provide practical recommendations for
professionals involved in supporting child participation in public law proceedings and reflect on future research areas.
CHAPTER 2 - SITUATING CHILD WELFARE, CHILD PARTICIPATION AND CHILDHOOD, IN PUBLIC LAW PROCEEDINGS

Introduction

The aim of this chapter is to explore the relevant academic literature to illustrate how in public law Children Act proceedings, the concept of child participation has become entangled theoretically and practically with notions of childhood and welfare that inspire an unhelpful ‘urge to protect’ children from all forms of harm, including those potentially posed by their participation in their own proceedings. In pursuit of those aims, I draw in section 2.1 on the academic literature to argue that the concept of ‘welfare’ has over time taken on a primacy through a gradual growing alignment between ‘welfare’ with ‘State paternalism’, ‘State provision’ and ‘State protection,’ which is very difficult to challenge. Consequently, I illustrate how this alignment of ideas dominates the ‘welfare principle’ in s1 of the Children Act 1989, to provide the necessary and apparently inevitable mandate for, not just the protection of children, but the total protection of childhood.

In the second half of this chapter, I develop the ideas I introduced in chapter 1.4 by setting out the relevant academic literature to plot how in the arena of public law proceedings, the concept of child participation has emerged over time both conceptually and ‘in action’. This inevitably involves an exploration of the impact of alternative understandings of child participation brought about by the conceptualization of children as depicted in the Convention as rights bearers and the academic literature arising from the sociology of childhood and critical developmental psychology that focuses on voice, competence and agency. I argue that these perspectives are important as they offer different ways of thinking about childhood, which whilst situated outside of the dominant understanding of childhood in public law proceedings, are becoming increasingly influential. What these perspectives provide are a series of theoretical lenses through which to critically unpick meanings given to childhood and consequently shed light on children’s participation in public law proceedings.
Throughout I argue that the dominance of the relationship between protection and welfare in public law proceedings drives professionals and policy-makers to settle on discreet formulations of childhood implicitly shaped by the ‘urge to protect’ that compels professionals to prioritise all versions of child protection over meaningful versions of child participation, professional competence over child competence and child dependence over autonomy.

2.1 Understanding Welfare in Public Law Proceedings

According to Fox Harding (1997) defining ‘welfare’ is never straight-forward because it re-emerges over time in different ways to reflect social and political influence or salience of prevailing ideas or discourses. Foucault (1972, 1973) argues that it is possible to trace changes in meaning, and thus problematize the axiomatic nature of their influence, to key moments of rupture or shift in discourse, often catalyzed by specific events. By drawing on those ideas, I argue that there have been three overlapping but broadly distinct discursive shifts over the past 200 years, which continue to powerfully inform how child welfare is understood. I term these discursive shifts ‘welfare-through-paternalism’, ‘welfare-through-provision’ and ‘welfare-through-protection’. I argue that by building on each other, the confluence of these three discourses is so influential as to make it very difficult to think about child welfare in any way other than as a conflation of the paternalistically-regulated provision of children’s needs, all powerfully underpinned by the ‘urge to protect’ that I introduced in chapter 1.

2.1.1 ‘Welfare-through-Paternalism’: the transition of welfare from Family to State through discourses of development.

Despite the proliferation of child deaths at that time, State welfare interferences in family life remained infrequent, right up to the middle of the 19th century (Fox Harding, 2007). Poor children who lived beyond the age of 7, were frequently expected to join the labour force and earn their keep. This meant that, like adults, children were exposed to the risks that working in factories or down mines entailed (Cunningham, 2005). Children who turned to crime were also treated in law as if they were adults and as such could expect to receive similar criminal penalties to their adult counterparts, including transportation and capital punishment (Eekelaar,
In fact, the only legislation that afforded welfare protection to children came under the auspices of the Poor Law Act 1601 and Poor Law Amendment Act 1834, where children were expected to work for their very basic needs to be provided by the authorities responsible for their welfare (Cunningham, 2005). Children from wealthier families were equally seldom referenced in law and if they were, only in passing as property belonging to their father. The 1883 Agar-Ellis case is often cited as exemplifying the primacy and unfettered dominance of parental (usually paternal) power at that time (Eekelaar, 2006). In that case, the Court had already ruled in the favour of Hon. Agar-Ellis who had removed his three children from their established home with their mother because she had resisted his belated wish for the children to be raised in his faith. Some five years later when the oldest daughter was 16, she asked the Court through her mother, to endorse her return home. In dismissing the mother’s application and subsequent appeal the Court re-affirmed its lack of jurisdiction to fetter the father’s legal right to decide the custody and education arrangements for his children. Thus, so it was in Victorian times, that when a child came to the attention of the Court in terms of their welfare, it was usually to be cited as the discarded or incidental object of middle-class proprietary issues or as the forgotten and neglected subject of the Poor Laws.

From the end of the nineteenth century, we can trace swift changes in social attitudes towards childhood through the emergence of legal and political developments where the State, Burman (2017) argues, began to command a broader and more juridico-political role over private households in the guise of paternalistic concern. As a consequence, a number of policy interventions were conceived that sought to improve the welfare of children – their health, learning, housing and social circumstances - through community intrusions into the family, for the purpose of conducting specialist assessment and subsequent monitoring of compliance (Quigley, 1996).

It is perhaps no coincidence that these changes coincided with the birth of psychology and more specifically, the psychological study of childhood (Woodhead, 2005; Burman, 2017). According to Kessen (1962), from the end of the 19th century, psychology-based ideas dominate thinking about ‘normal’ physical, emotional or cognitive development, the yardsticks
by which welfare could be measured. As we saw in chapter 1, determined by their ‘normative’ or ‘stage-related’ approach to childhood, psychology popularized the view that child development was a predictable and sequential progression, (and in that sense, indisputable scientific assumption), in the course of which a range of universal features emerged as the child matured. Thus, by presenting these ideas as deriving from natural science, psychology was presenting itself as a reliable, objective source of scientific knowledge (Morss, 1990). Read this way, I suggest that it is perhaps also unsurprising that legal practices sought to rely and perhaps over-rely, on developmental psychology discourses: there was no reason not to. The allure of these discourses around development, where age was (and still is largely) unchallenged as a prognostic indicator of ‘normal’ development, would have been difficult to resist, especially as there seemed no viable alternative theories at that time. As discussed in chapter 1, a potential consequence of practice that approaches mainstream developmental discourses in an unquestioned or unchallenged way is the construction of the idealized ‘normal’ child against which other children become ‘pathologized’ or ‘othered’ (O’Dell & Brounlow, 2016; Holt, 2018). Consequently, critical psychologists such as Burman (2017) and Walkerdine (1993) have argued that such forms of standardization are not neutral but are simply the result or naturalization of these popularised usages of language and practice.

Pertinently for my research, Lee (2005) argues that the consequence of drawing on mainstream developmental discourse is that it legitimizes the intervention of adults and moreover experts to monitor, assess and instruct children and families. In other words, one of the consequences of being subject to developmental discourses is the proliferation of State paternalism for the assumed common good of all children. According to Fortin (2009), the effect of these practices accentuate parental responsibility towards their children, by urging parents to work on themselves so as to reduce the harm or risk of harm they might otherwise pose to their children. Thus, one of the effects of constructing welfare through State paternalism was to shape adults’ urge to protect children, by defining behaviour that was beneficial to their children’s development (Donzelot, 1980). Cunningham (2005) cites an early example of such practice can be found in the Children Act 1908. Specific provision was made in this Act for the administration of justice for children who found themselves in conflict with criminal law and/or
experiencing neglectful parenting. What he illustrates is that whilst the introduction of the juvenile Court is, on one level, a way of administering justice for children in different ways to adults, and thus acknowledging their developmental needs, the more perfidious consequences of the introduction of the juvenile Court was to single out and implicitly sanction the increased influence of the State over this group of children and by extension all children. The ‘protections’ that were consequently introduced to regulate the public spaces in which children spent time in order to keep them safe from corruption, also served to curtail children’s freedoms. In consequence, Cunningham (2005) suggests that whilst school attendance became an imperative (both to educate, socialize and monitor children), children became conspicuous by their absence on the streets, in the workplace and in public houses, as their presence there was regulated or outlawed. Thus, whilst the confluence of the depraved with the deprived served to bring children legitimately under the paternalistic umbrella of good influence and undoubtedly did much to enhance children’s development, there is a more perfidious aspect to these practices. By bracketing childhood off from adulthood, the imposition of institutionalized norms around which their daily lives were organized made children dependent on adults for their protection and the provision of their basic needs in ways that had not previously existed. As Cunningham (2006) later suggests, children did not necessarily experience these changes as beneficial as they struggled with their impecunious and socially isolating circumstances.

Drawing on Foucault’s notion of surveillance,31 Donzelot (1980) traces the growing influence of developmental psychology in disciplining families into welfare practices that enabled the rise of State intervention in their lives, effectively through the back door. Poorer families were more likely to be targeted as ‘problem families’, and thus intervention was less subtle. For others, those interventions came in more implicit forms: by striving to emulate what Burman (2017) criticizes as the pseudo ‘scientific mothercraft’ (Burman, 2017; 71) of child development experts or otherwise feeling compelled, anxious even, to advance the welfare of their ‘priceless child’, as Zelizer (1985) notes critically. This mounting pressure to collude with the paternalistic overtures of the State ended up, according to Donzelot, with families often unwittingly policing

31 See chapter 3: professionals such as doctors and social workers exercise power over their clients by using their expert knowledge to turn them into ‘cases’ that warrant observation and monitoring
themselves in the name of promoting and indeed protecting, what they are told is and believe to be ‘natural’ development.

I suggest that the convergence highlighted through Donzelot’s work, between paternalistic State interest and good parental motivation can be seen to underpin a number of recent policy initiatives including the ‘Supporting Families’ (Home Office, 1998) or ‘Troubled Families’ programmes, Sure Start (1998 – 2004) and ‘Every Child Matters’ agendas (DfES, 2003). Indeed, Hartung (2017) suggests that by drawing heavily on ideas from developmental psychology, these programmes have become no more than the tools of an audit and inspection culture, now extending directly into family life. In that regard, Edwards & Gillies (2016), highlight how the proliferation of neuro-scientific discourse provides another mandate for rigorous and intensive monitoring of families. As a result, specialist neuro-scientific knowledge has become a compelling and powerful but paternalistic risk management tool that when linked with risk and safeguarding practices (ideas that I go on to suggest in 2.1.3, shore up the inevitability of the adult ‘urge to protect’) reinforces the importance of focused and intensive surveillance of families by the State (Gillies et al, 2017). After all, there can be no greater imperative than ‘saving babies brains’. Thus, as Gillies et al (2017) go on to demonstrate, by portraying families as unwilling or unable to police themselves, the paternalistic practices involved in identifying, targeting and policing so-called ‘high risk families’, become justifiable. The perception is that otherwise, children in those families remain extremely vulnerable and hence in need of professional protection. As we shall see from my analysis chapters, when surveillance is associated with constructions of childhood as a time of vulnerability, innocence and dependence, as I suggest is the case in public law proceedings, these paternalistic ideas about welfare and its links to protection become very compelling, as they fuel and perpetuate the ‘urge to protect’.

I conclude this section by reflecting on how these mandates operate under the Children Act 1989. Ordinarily, the State will seek Care Orders under sections s31\textsuperscript{32} (permanently) and s38

\textsuperscript{32} Under s 31(2) Children Act 1989, a Court may make a care or supervision order if it is satisfied that:
(temporarily), in the first instance. In extreme circumstances, the State may use section 25 of the Children Act 1989 to secure the ultimate in paternalistic intervention; the provision of secure accommodation for children ‘provided for the purpose of restricting their liberty’ for extended and extendable periods of time. In either situation, the State is seeking to intervene and remove children from their families and as their corporate parent, to impose alternative living arrangements on them, believing that this is in the child’s ‘best interests’. This is an integral but contested term linked to understandings of welfare that I return to below. The point I wish to make here is that reaching decisions about children’s welfare does not simply involve making assessments about what protection means. It means drawing comparisons about children’s development against that of a similar but ‘normally’ developing child, or put another way, drawing on specialist knowledge to make decisions about which children are the most vulnerable and thus most in need of their protection (Rose, 1989; Walkerdine, 1993). I argue that this is a powerful mandate indeed, given it is the State that sets the standard for what is regarded as ‘normal’ and in this sense controls how and what constitutes the specialist knowledge enacted or used in practice, and by association what knowledge informs assessments of harm and risk of harm.

In accord with Burman (2017) and Rose (1985) amongst others, I suggest is that welfare-through-paternalism has become a mode of intervention where under the banner of protecting children’s development, the State has acquired increasing influence and control over the family, to the point where some critics suggest State involvement is akin to the surveillance of childhood. In this sense, knowledge derived from child development has become a tool by which to mobilise the ‘urge to protect’ and consequently set the standards of protection adults are required to provide in order to save children from harm.

- the child concerned is suffering or is likely to suffer significant harm; and
- that the harm, or likelihood of harm, is attributable to the care given to the child, or likely to be given to them if the order were not made, not being what it would be reasonable to expect a parent to give to them; or the child’s being beyond parental control.
In this next section I look at the notion of welfare-through-provision, where the State positions itself as the family’s supporter and provider through discourses of rehabilitation and prevention.

2.1.2 ‘Welfare-through-Provision’: the transition from family to State through discourses of rehabilitation and prevention

Whilst ideas about rehabilitation and prevention co-emerged within the broad context of paternalistic social policy that can be traced to the 19th century, their influence in marking out the course of welfare as interpreted through developmental discourses was not as profound. In common with Fox Harding (1997), I argue that the conflation of welfare with discourses of prevention/rehabilitation became much more prevalent, prolific and powerful during an era where in a country keen to counterbalance and indeed eliminate social injustices after the Second World War, the welfare gaze fell more strongly on recovering families. Importantly, welfare-through-provision implies that difficulties in parenting can be remedied with State assistance and support. According to Thomas (2002), the notion of rehabilitation that had emerged within the dominant framework of developmentalism at the turn of the 20th century, imbued with notions of individualization – if the child failed, the parent had failed - enjoyed a significant and powerful resurgence, re-constituted in terms of social responsibility. In that sense, the State enrolled everyone in the plight of keeping children safe for the benefit of the whole of society. Consequently, if the child failed, society was seen to fail.

The influence of these ideas was in no small part driven by the work of Bowlby (1951) and later on, by his contemporaries in the field of child attachment, theories that Holland (2010) found still pre-dominate in child protection work. Briefly, attachment theory expounds that the thriving child is the securely and maternally bonded child. Inevitably, attention focused on parenting behaviour, ultimately implying mothers were primarily responsible for their children’s failure to thrive (Burman, 2017). Reflecting these new understandings of child welfare, the 1948 Children Act consolidated the new notion of ‘normalising’ care as adjuncts of care. According to Fortin (2009) this marked a change in thinking about alternative care to the family, which since the

33 for example, Bowlby’s (1973) ‘internal working model,’ Winnicott’s (1960) concept of the ‘good enough mother’ and the Robertsons’ (1958) work around ‘separation anxiety’
Prevention of Cruelty to Children Act 1904 had been used to remove children from ‘unfit’ parents. Framed instead as substitute care for children, the expectation that foster care be used as a stop-gap marked a profound dynamic shift in the relationship between the State and the family, to one of mutual dependency. Now, the focus of professional surveillance, monitoring and guidance was to produce ‘good enough’ parents who could continue the work of creating the securely attached member of the family and by implication normally functioning future member of society (Oates, Lewis & Lamb, 2005). In that sense, parents were being urged to prove they could protect their own children.

During the 1960s, shifts in legal, social and political perspectives from rehabilitation to prevention, manifested primarily in emerging discourses around ‘risk’ and moreover, the ‘prevention of risk’ (Fox Harding, 1997). Fox Harding (1997) goes on to illustrate how the popularity of this idea that featured across the findings of the Ingleby Report (1961), notably in the context that ‘prevention is better than cure’ that subsequently underpinned the Children and Young Persons Acts of 1963 and 1969, to popularize policies around ‘improvement’ and ‘tackling problems before they arise’. Fox Harding (1997) argues, however, that making the business of parenting, community business, positioned children within institutional discourse and practice in ways that imposed significant authority and indeed responsibility on all adults to provide support, guidance, monitoring and learning to shape, correct and ultimately regulate childhood. The 1969 Children and Young Persons Act is a case in point. Hendrick (2003) argues that the primary objective of that Act was to channel young offenders into the care system by favouring care and supervision Orders over incarceration. Thus, by conflating the ‘criminal or offending child’ and ‘ill-treated or offended child’ a growing number of children were received into care as children who could be rehabilitated with professional welfare-focused support.

As Giddens (1991) highlights however, focusing on risk implies that it is possible to anticipate and prevent unwanted outcomes. There are significant ramifications for professionals operating in this environment. Fergusson (2004) argues that the realities of working in a political climate, prevalent with notions of responsibilisation and individualization, keen to name, blame and
shame those professionals who get it wrong, means the pressure on professionals to make the right decision about children’s welfare is enormous. When the potential outcome of making a mistake might be the death of a child, the stakes are indeed professionally very high. Interestingly then, despite a number of reports about high profile child deaths (for example, Victoria Climbié (2002) and Peter Connelly (2007)) that have highlighted the potential dangers in pursuing policies that equate welfare with prevention or rehabilitation as too lenient, policies predicated on ‘correction’, ‘improvement’ and ‘regulation’ remain powerful prevention and rehabilitation tools used by the State to implement change in families today (Condry, 2007).

What all of these policies have in common is that they focus ultimately on the capabilities of parents. In that sense, these services fall into the traps I discussed in chapter 1 in relation to the ‘Universal Child,’ where children risk becoming little more than a set of symptoms in need of adult care: fix the adult by making them a safe parent, fix the problem. Some policies focus on short-term but intensive State provision of services such as parenting courses in an attempt to engage identified so-called ‘failing families’ (Hendrick, 1997). Others focus on longer-term State provision of health processes in an attempt to document/gauge so called non-normative development (O’Dell et al, 2018). Despite concerns in the academic literature as to whether the practices these policies produce can actually prioritise children’s welfare as they blur adult-focused targets with child-focused outcomes, (Alberth & Buhler-Niederberger, 2015; Horwath & Tarr, 2014), and prioritise the needs of others over those of the child (Holland, 2010).

What I suggest in this section is that whilst welfare-through-prevention provides opportunities for families to stay together long term, it comes at the cost of positioning children as by-products in a system focussed on fixing adults. This is perhaps unsurprising when professional practices are informed by their understandings of child attachment; theories that actively implicate adults in harming children. The fix is therefore to prevent parents harming children by making them protective adults by instilling in them, the urge to protect children.

In this next section, I turn to look at the role protection has increasingly played in defining welfare.
2.1.3 ‘Welfare-through-Protection’: the transition from family to State through discourses of protection, risk and safeguarding

According to Heywood (2018), the Prevention of Cruelty to Children and Protection of Children Act 1889 was heralded at the time as a turning point in thinking about what constituted child welfare. Whilst the risks to welfare highlighted in this legislation were extreme by today’s standards - baby farming, abandonment or infanticide - prosecuting offending parents for these crimes under the guise of protecting children, marked the first step of State intervention into familial abuse towards children. The enactment of subsequent legislation, notably the Prevention of Cruelty to Children 1904 and the Children and Young Persons Act 1933, served to consolidate, strengthen and broaden the circumstances in which the State could act to protect children (Cunningham, 2005). Pertinently, alongside its detailed schedule of acts deemed harmful to children, the 1933 Act formally introduced the concept of the ‘welfare of the child’ which so fundamentally underpins the public law system that prevails today, where, I argue, the concepts of protection and welfare have become increasingly conflated and even synonymous, as I will illustrate now.

As the UK headed into the 1970s, political focus fell on the catastrophic consequences of returning children to so-called ‘failing families’. The death of Maria Colwell in 1973, beaten to death by her step-father at the age of 7, fourteen months after having been returned to her mother’s care, against her wishes, was the first in a number of high profile cases that led to a series of legislative changes, constructed around discourses of harm, risk and protection. The implementation of the Children Act 1975, which followed the publication of the Colwell Inquiry, finally put rest to lingering notions of family paternalism or the idea that ‘parents know best’ as it created the platform for the numbers of children received into care to increase (Fox Harding, 1997). In this sense, I argue that the notion of welfare-through-protection has unequivocally

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34 Section 44 of the 1933 Act provides that: every Court in dealing with a child or young person who is brought before it, either as [...] an offender or otherwise, shall have regard to the welfare of the child or young person and shall in a proper case take steps for removing him from undesirable surroundings, and for securing that proper provision is made for his education and training.

35 Of the 34 enquiries that took place between 1972 – 1987, the most notable in terms of their influence over the inception of the Children Act 1989 are Jasmine Beckford, London Borough of Brent, 1985, Kimberley Carlile, London Borough of Greenwich, 1987 and Tyra Henry, London Borough of Lambeth, 1987
gained in ascendency and breadth since that time as public awareness and thus disquiet over the harm that can be done to children has swelled.

Described as a ‘watershed moment’ (Kitzinger, 2004), the events that unfolded in Cleveland during 1987, where over one hundred children were, as the Report of the Inquiry into Child Abuse in Cleveland (Butler-Sloss, 1987) consequently established, wrongfully removed from home, largely settled any debate as to whether child protection trumped the authority and sanctity of the family, once and for all. Whereas 10 years earlier, Postman (1985) decried the disappearance of childhood to illustrate the increasingly blurred boundaries between adulthood and childhood by virtue of the widespread access and exposure children had to media and thus information, Dingwall et al (1995), espoused the disappearance of parenthood illustrated by the perceived dangers of the intrusion of the State into family life. Since then, there has been a distinct shift across the academic literature highlighting the perceived dangers of linking child protection to child welfare. In the context of child sexual abuse, Lovett et al (2018) suggest that discourses that frame children as objects of protection continue to dictate professional practices whilst tropes around the child’s voice, that frame children as subjects with voices and rights, are largely overlooked. Others, such as Fergusson (2004) question whether it remains possible to really think about children as moral actors with the right to be heard, in a climate where social workers so tightly regulate child participation because participation itself is deemed harmful and thus something from which children need protection. As we shall see in chapter 3, fundamental to these debates is the question of how power relations are organised and affect those subjected to them.

These concerns across the academic literature result in no small part from what I suggest can be traced to be a widening ambit of what constitutes child protection, predicated on the growing influence of psychological knowledge. Whatever the reasons, the idea of anticipating and then preventing possible abuse became more important after Cleveland, since when Fergusson (2004) argues professionals have come under immense pressure to anticipate and respond to harm before it had even occurred. Interestingly then, whilst a significant issue at this Enquiry had been the overly zealous interventions undertaken by child protection professionals, we can
see how in the aftermath of the Cleveland Enquiry, State power in the child protection system has only amplified.

Indeed, since Cleveland, I suggest that the welfare-through-protection discourse has become so aligned with welfare-through-prevention and welfare-through-paternalism so as to make thinking about any other forms of child welfare practice very challenging. In this regard, removing draft provisions from the Children Act 1989 that gave the Court power to carefully scrutinise the welfare reasons given by the State for initiating child protection proceedings, removed the last vestige of opportunity to hold the State to account in terms of what ‘harm’ meant and what ‘protection’ meant (Parton et al., 1997; Hendrick, 2003). Without this authority, the Court lacked, according to Bainham (2013), the ability to push back against those powerful protection-related discourses that have so successfully infiltrated and broadened what constitutes a legitimate child protection and therefore welfare concern in the eyes of professionals engaged in that work. This is an especially pertinent observation when we see how monitoring of families has increased in order to properly protect children from the more insidious effects of such complex and subtle parenting behaviour described as ‘highly resistant’ (Brandon et al., 2008, 2009, 2010), ‘collusive’ (Lovett et al., 2018) or ‘disguised compliance’ (Reder & Duncan, 1999).

The Children Act 2004, implemented to give force to the recommendations from the Climbie enquiry (Laming, 2003) heralded further changes to child protection by foregrounding the primacy of the safety needs of children from their earliest years. This further shift in policy places, I suggest, significant pressure on child protection professionals to re-orient their practices so as to focus exclusively on protection in all its forms. In the same context, Burman (2017) reflects on the invidious task of conducting ‘what-if’ thinking, where ‘the child-at-risk becomes the risky child’ (p91). The implication is that professionals involved in child protection have a thankless task ahead of them where if they fail to anticipate the vast and increasing protection needs of the child, they fail to protect themselves as well. As Parton (2005) illustrates, this is because when ‘safeguarding’ became the new watchword, the language across policy moved beyond ‘child protection’ to encapsulate the broader but more urgent task of catching
and mitigating the risks to children early. It moves to a form of total protection. As Fergusson (2004) suggests, ‘welfare’ now occupies that dangerous space between ‘future happenings’ and ‘present knowledge and practices’ where professionals are asked to predict the unpredictable. Perhaps inevitably the shift from protection to enhanced protection, or safeguarding necessitated the rolling out of initiatives organized around the collation and sharing of information about children across an integrated system geared towards protecting children’s welfare. Expecting professionals to anticipate problems before they had even arisen, makes it essential they have these enhanced monitoring tools at their disposal. In that sense, these systems – the inaugural national children’s database and Local Safeguarding Children’s Boards - were necessarily forms of super-surveillance that endured across childhood.

Procedural changes to child protection were also introduced through the implementation of the Children and Families Act 2014. This Act gave effect to the recommendations of the Norgrove Review (2011) primarily to prevent delays for children that increased their prospects of placement disruption, prevented children accessing therapeutic support and/or reduced children’s chances of moving on to permanency. Streamlining Care and Supervision Order proceedings meant limiting the time proceedings took to 26 weeks. Separate changes were made to limit the number of expert reports commissioned in those proceedings also. Coinciding as these reforms did with further cuts to legal aid, these reforms have raised concern in the academic literature (see Watson, 2014), as only enhancing child welfare if what is meant by child welfare is child protection. The perception is that these reforms merely serve to marginalise children further from their proceedings by forging the path of least resistance towards targeted protection-focused outcomes (Masson, 2016; Bainham & Gilmore, 2015). When placed into context where, as we saw in chapter 1, children (and by extension their representatives) play no formal role in pre-proceedings, children seem to be distinctly disadvantaged in responding to the State’s case.

In this section I have drawn on the relevant literature to argue how, over time, and notwithstanding a competing range of contradictory perspectives that inform thinking about childhood, the concept of ‘welfare’ that dominates thinking in child protection and public law
proceedings is one that has become entangled with everyday notions of children as being in need of protection. Clearly, on the face of it, these are admirable and desirable qualities. However, I have suggested that discourse has explicitly shifted beyond what might be regarded as child protection to ‘safeguarding children.’ In that regard, I argue that recruiting safeguarding to the discourse of welfare-through-protection, legitimizes a system of State intervention, dominated by risk assessment and driven by the paternalistic surveillance of families and the collation and presentation of evidence in order to promote children’s safety and protect them. In that respect, welfare-through-protection operates so as to bring together discourses that align welfare with paternalism and/or prevention so that all welfare discourse is now attributed to protection. As we shall see in the second half of this chapter, these ideas about welfare have become so very powerful so as to make it very difficult for professionals to contemplate children’s participation in their own proceedings beyond ‘professional participation.’Whilst this is not a new revelation, it is an important reminder about the power of discourses around protection and child development that James & James (2004) argue provide professionals with the platform from which the prevailing Children Act system and the child’s peripheral role within it, become justifiable.

I now turn to consider how the notion of child participation has developed in public law proceedings and the place it occupies in those proceedings as a platform for children to speak or be heard to speak, and to be involved in decision-making processes about them.

36 the practices of professionals (the Guardian usually but social workers as well) who attend Court and as part of their professional duties, convey the child’s ‘wishes and feelings’ to the Court in the child’s stead supported, as appropriate, by a letter from the child to the Judge.
2.2 Understanding Child Participation in Public Law Proceedings

In this section I draw on the relevant academic literature to explore the extent to which theoretical opportunities that now exist for child participation in public law proceedings have become actual opportunities. This involves examining how children have achieved the right to participate, or to have a voice, or to exercise agency within the arena of public law proceedings, where the concept of ‘welfare’ is so dominant.

Since the implementation of the Children Act 1989, mandatory provisions exist that bring together the skills of the child’s Solicitor and Guardian as a combined unit representing children in Court in public law proceedings, in children’s absence. Under this system, children’s views are ordinarily brought to the attention of the Court by the social worker and Guardian who are obliged under s1(3) Children Act 1989 to seek and ascertain the ‘wishes and feelings’ of those children as part of their task of reporting to the Court about children’s welfare-through-protection. The social worker includes the children’s ‘wishes and feelings’ in the reports they file in support of their applications, which are usually geared towards removing children from their families. The Children’s Guardian’s role is slightly different. In their role as the child’s proxy representative, they are charged with analyzing the Local Authority plans for children and if there are gaps, to make recommendations about how to fill them. This involves a wider consideration of the placement options for children than the Local Authority might be able to contemplate, including whether children might remain at home. Their Analysis reports are therefore a culmination of all their enquiries into the welfare-through-protection of the child, which include speaking to the child but also other professionals and the parents. Implicit in these practices is the idea that all children have the opportunity to participate in their own proceedings by giving their views to professionals during their meetings with them. As a result, other versions of participation are perceived as additional or supplemental to this default version of child participation. A further implication is that without supplemental or enhanced versions of participation the lawyers, including the Judge, only know about the child and their circumstances through the social work evidence and the Guardian’s reports.
Importantly, reporting the ‘ascertainable wishes and feelings of the child’ remains but a single limb of a complex set of interlinking factors, which are cumulatively known as ‘the welfare checklist’ and which professionals are obliged to apply in ways that they perceive will ensure the child’s ‘welfare’ or ‘best interests’ remains ‘paramount’. This means that despite what looks like a move to include children and have them represented, the impression the Court has about the children for whom they are making decisions, is very much tempered by what the care professionals report to the Court as important to their assessment of welfare.

In this context I argue that interpretations of participation and welfare drive polarised and conflicting ways of thinking about childhood, leading professionals and policy-makers to settle on a discreet type of child participation. This version of child participation favours a strong version of welfare-through-protection that mandates practices where professionals speak in the place of children themselves about what they believe to be in children’s ‘best interests.’

Children’s participation was not always organised thus. Indeed, 150 years ago, children who wished to participate faced very different challenges. As we saw above in the context of the Agar-Ellis case, children found it difficult to participate in proceedings about them, not because they needed protecting from their proceedings but because the Court lacked the authority to challenge the decisions of adults, notably their fathers. This meant that whilst children could be actively prosecuted in criminal Law, children could not actively issue, pursue or indeed respond to proceedings in the civil jurisdiction. Consequently, up until fairly recently, proceedings about children were settled in an environment that pitched the interests of adult against adult, parent against professional (Sherwin, 1996).

The introduction of legal representation for children under the Children and Young Persons Act 1969 barely altered this pro-adult dynamic, where despite there being provision for children to have their own Solicitor, this often proved merely fortuitous for the still unrepresented parent, who usually argued the parents’ case as the child’s case (Fortin, 2009). That said, under s.22

37 S1(1) Children Act 1989 states that ‘when the Court determines any question with respect to the upbringing of the child […] the child’s welfare shall be the Court’s paramount consideration.’
of that Act, all children over the age of 5 were expected to attend their own Hearings if the Court was being asked to make an interim Care Order. As a consequence, Judges regularly saw and spoke with children at Court. So even in circumstances where it could be said that parents were largely assumed to represent the interests of the children, the Court had the opportunity to meet with and speak to children very frequently.

It was only when legal aid funding was finally introduced for all parties in 1984, that the parents – and by implication, the child - achieved separate legal representation before the Court (Fortin, 2009). By 1986 the Law Society’s Child Care Panel\(^{38}\) was fully established to ensure only those Solicitors demonstrating the necessary specialist knowledge and experience of child law, ethics and procedure, represented children.

In the meantime, and following the Inquiry into the death of Maria Colwell in 1971, steps were taken to train up and appoint former social workers or probation officers to act as Guardians ad Litem for children in proceedings. This reflected a general growing consensus in child protection that paying attention to children’s experiences might help professionals protect children (Crane, 2019). This meant in practice that there was a period of time where Judges conducting Hearings about children routinely met, or at least saw, the children, heard about those children from the child’s own Solicitor and in addition had access to welfare reports compiled by the wholly separate auspices of the Guardian ad Litem.

In 1984, Mrs Gillick\(^{39}\) sought a declaration that the advice the DHSS was giving to medical practitioners that in certain circumstances, children could make informed decisions and be given contraceptive advice and treatment without their parents’ knowledge or consent, was unlawful. When, in 1986, the application was finally refused by the House of Lords (meaning some children would be able to receive contraceptives without their parents’ knowledge), their decision was heralded as a significant step forward in achieving rights for some children,

\(^{38}\) Now known as the Law Society’s Children Panel

\(^{39}\) Gillick v West Norfolk and Wisbech Area Health Authority [1986] 1 FLR 224 (House of Lords)
recognising in law for the first time, not just the unique and non-universal characteristics of adolescents but how, in some circumstances some children might influence decision-making and hence exercise autonomy (Freeman, 2001). Eekelaar (1986, 182) suggests that children have, as a result of this Judgement, achieved ‘that most dangerous but most precious of rights: the right to make their own mistakes’. As we shall see in section 2.2.2, and with the benefit of hindsight, I suggest that this Judgement has served to polarise thinking about competence and position most children as being incapable of proving their competence. Consequently, few children ‘qualify’ for versions of participation that permit their involvement beyond their proxy representation.

The United Nations Convention on the Rights of the Child 1989 (‘the Convention’) was ratified 5 years after this Judgement, in 1991. Even though its terms are not enshrined in Law in England and Wales, its ethos marked an immediate and significant shift in thinking about child participation. Indeed, as discussed in chapter 1, the role of children in decision-making is frequently mentioned as a key component of participation, often with reference to Article 12 of the Convention (Mannion, 2012). Explicitly, limiting child participation in decision-making by age, as we shall see in section 2.2.2 below, tends to occur in public law proceedings in England and Wales, is discouraged (Committee on the Convention, 2009). Instead, ‘age and maturity’ as posited in Article 12, are to be considered in light of the construction of ‘evolving capacity’ (Willow, 2010; Committee on the Convention, 2009). This concept encapsulates the complex idea that children stand on a trajectory of ‘enhanced competency’ (UNICEF Report, 1995), which has been described as:

‘recognizing children as active agents in their own lives, entitled to be listened to, respected and granted increasing autonomy in the exercise of rights, while also being entitled to protection in accordance with their relative immaturity and youth’. (Lansdown, 2005).

Whilst this might superficially resemble the ethos of Gillick competence discussed above, the starting point is different in that under the Convention children of all ages are presumed to have
valid views, which can contribute to initiatives for change, so long as adults support them to articulate them (Lansdown, 2001). This places the responsibility on adults to develop imaginative, relational ways by which to include all children in decision-making, including through non-verbal forms of communication, if necessary (Bouma et al, 2018). In other words, under the Convention, adults are responsible for promoting protection, provision and participation equally. Indeed, these inherent tensions between English Law and the Convention have led to the suggestion that in England and Wales some child rights - to protection from harm and provision of needs - matter more than others (Lansdown & Newell, 1994).

Pivotally, through ‘evolving capacity’ children are positioned as ‘social actors, capable of advocacy and action’ (Lansdown & Karkara, 2006; 692) instead of as ‘victims’ whose views can be paid tokenistic platitudes (Tobin, 2013) or downplayed in favour of the ‘more competent’ and knowledgeable professional (Lowden, 2002). Simply put, Tobin (2013) cautions that assuming that the deficits associated with childhood equates to a lack of participation rights, merely reinforces their deficits as it leaves children dependent on the goodwill and support of others.

Whilst there have been calls for the idea of participation to be conceptualized in the domestic laws of England and Wales, - indeed Bouma et al (2018) argue that embedding the concept of child participation in legislation and policy remains an imperative – this has not occurred. Lee (2001) suggests the reason for this is because implementing and legislating practices of participation is something that is much harder to do in reality than merely conceptualizing it. However, without the legislative framework to support it, child participation as envisaged by the Convention is unlikely to be either achieved (Mannion, 2012) or sustained (Kennan et al, 2016).

With no avenues of direct enforcement in England and Wales either, the Convention constitutes only a weak form of Law here where compliance with requests from the Committee for information is poor (Fortin, 2009). The suggestion that this ambivalence reflects a more general ‘intolerance of childhood’ (Committee of the UNCRC, 2016; 1) perhaps demonstrates quite how untroubling the Convention’s Articles of participation are to adults here. More pertinently for this research, it perhaps reflects the lack of significance given to children’s views in disputes about
them generally, as raised by Baroness Hale, judicially\textsuperscript{40} and extra-judicially (Hale, 2012). Perhaps this same lack of significance given to child participation is the reason why the UK Government has to date refused to ratify the European Convention on the Exercise of Children’s Rights 1996, which would have given children procedural rights underpinning their right to participation in the guise of greater access to information and direct representation by a lawyer.

The Children Act 1989 came into force\textsuperscript{41} against this backdrop, where thinking about children’s autonomy, agency and rights was gaining traction. This legislation marked the first time outside of adoption proceedings\textsuperscript{42} that the Court came under any obligation to have regard to the child’s ‘wishes and feelings’ in any form. In fact, it was only the introduction of the expanded role of the Guardian under the Children Act 1989 that seemed to make children’s attendance at Court obsolete. Henceforth, the position extolled on behalf of the child was that delivered through a welfarist lens by the proxy Guardian who had effectively taken the child’s place. Arguably then, the introduction of the Guardian removed children physically from their own proceedings and distanced them further from their opportunities to participate by reporting their views to the Court in their stead.

Examining the cost of these practices for children inevitably involves a scrutiny of the problematic nature of the inter-relationship between dominant constructions of welfare and child participation. I aim to do this by making visible some of the dilemmas caused conceptually and in practice by the notions of the child’s voice, listening, competence and agency, which I plan to turn to now. To some extent the literature on which I draw inevitably overlaps with the literature arising from the sociology of childhood and critical developmental psychology, which was considered in chapter 1. What these perspectives have in common, and which appear deeply antithetical to any practice informed by welfare-through-protection, is an understanding that by virtue of the relational processes in which they are already embedded children always

\textsuperscript{40} Regina v Secretary of State for Education and Employment and others (Respondents) ex parte Williamson (Appellant) and others [2005] UKHL 15.
\textsuperscript{41} 14 October 1991
\textsuperscript{42} S6 Adoption Act 1976
already exercise and indeed have a right to exercise agency in relation to their circumstances (Oswell, 2013).

Whilst it could be argued that the versions of child participation that exist in public law proceedings conceptually straddle the boundaries I have introduced through my sub-headings, I intend to introduce all of them in the section of the child’s voice, save for Gillick competence, which I introduce in the section relating to competence.

### 2.2.1 Participation-through-Voice

Since the call to understand children's lives and lived experiences from their own perspectives that is strongly associated with critical approaches to childhood (James & Prout, 1997; James et al, 1998; James & James, 2004), the orientation to the child’s voice has become a key trope to powerfully engage claims to identity, representation and authenticity (Baker, 1999; James, 2007; Tisdall and Punch, 2012; Burman, 2017). Consequently, Lee (1999) argues that ‘the child’s voice’ presents a critical challenge to adult-child relations that otherwise routinely ignore or overlook the child’s views. Thus, when children feel listened to and understood by child protection professionals, they describe feeling empowered, (Cashmore, 2002), and more able to cope with adversity (Bagshaw, 2007). Children have also reported finding detailed questioning beneficial as it demonstrates that professionals were listening to what they said and took them seriously (Davidson et al, 2006).

Importantly however, there are those who question the relevance of the concept of voice given the multiplicity and ambiguity of agendas and meanings associated with it:

> ‘Policy-makers, practitioners and researchers around the world regularly refer to it; a myriad of documents suggest how ‘voice’ can be solicited and offer reasons that range from the utilitarian to the idealistic to say why it is important. One could be forgiven for thinking that ‘voice’ is now an empty jug into which any number of competing meanings can be conveniently poured for any number of contradictory ends’ (Thomson, 2011; p19).
When placed in the context of Children Act proceedings generally, where academics remain divided as to whether the professional practice of ascertaining the child’s ‘wishes and feelings’ constitutes ‘a philosophy of empowerment to children’ (Hodgson, 1990), or simply another adult-regulated tool of child participation (Fox Harding, 1997), questions about the relevance of the child’s voice become extremely pertinent and apposite.

According to Tisdall (2012), rather than facilitating children’s participation in the decision-making process, ‘voice’ has become a trope in Children Act proceedings through which to primarily make ‘known’ those professional views that represent the welfare-through-protection interests of children. This resonates with Fernando’s research (2013) where she found that depriving children of a context in which they report their ‘wishes and feelings’ to professionals during private law proceedings, led to children feeling tricked, not being taken seriously and feeling as if their views were being filtered or reinterpreted by the professionals reporting them. The more insidious aspect of these practices is that, according to James & James (2004) welfare interpretations of the child’s voice merely re-produce prevailing social and cultural notions of good or normative childhoods and thus perpetuate the modification, mediation or normalising of the child’s position. As a result, Sawyer (1999) suggests in her work with Guardians, that children’s views become concealed behind ‘another layer of value judgements…’ and ‘another layer of human values which may contradict those of the child to whom her views are imputed’ (106/7).

Crucially, the implication is that by operating like this, professionals, including the Judge, have a wide discretion to override the wishes of children, where they can argue that to not do so might seriously compromise welfare. For Eekelaar (1991), the ambiguity this creates around the importance of the child’s voice is problematic because it means:

‘a judge can consider almost any factor which could possibly have a bearing on a child’s welfare and assign to it whatever weight he or she chooses’ (p125).
The research highlights, for instance, how proxy voices can stifle children’s views (Thomas & O’Kane, 1998) especially when children’s interpretation of their experiences is at odds with that of the professional with the consequence that children’s participation becomes marginalized (Sawyer, 1999; Lonne, 2008). In other research, Bessell (2011) has argued that ignoring or undervaluing the views of children creates a double bind in that as well as feeling powerless and unheard they also feel misunderstood and discredited as unreliable, rebellious or challenging when they try to be heard.

Expanding on James and James’ (2004) notion that these practices constitute a ‘developmental straightjacket’ (p.190) for children, which I discussed in 2.1.1 above, I suggest such practices also constitute a developmental straightjacket for professionals as well. This is because their overly deterministic or rigid reliance on developmental theories simultaneously prevents professionals from really listening to the views of children and pertinently, to any views that do not accord with those hegemonic and cultural norms that produce welfare-through-protection (McLeod, 2006, Bell, 2002, Thomas, 2002). The implication is that while child protection professionals may feel they listen to children, the institutional constraints under which they are expected to work can restrict how they can relate to children (Mannion, 2007; James & Lane, 2018). These findings reflect those across the academic literature in work with children who have lived in families experiencing domestic violence, a scenario that frequently brings children into public law proceedings. Callaghan et al (2018) highlight the challenges for children when what they can and cannot say becomes conflated with, and contingent upon, assumptions professionals have about ‘normal’ developmental regulation. This resonates with the work of Skjorten (2013) and Birnbaum and Sani (2012) who draw attention to the welfare risks to children of framing competence to speak through age and development without regard to the child’s experiences. These findings perhaps help to explain why a number of decisions have been reached that can sometimes be difficult to reconcile across the private/public law jurisdictions. For instance, in Re L, a private law case where a father alleged to have been violent was seeking contact to his children, Butler-Sloss P said that ‘we would see their [the children’s] wishes as warranting much more weight than in situations where no real reason for

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43 Re L (A Child) (Contact: Domestic Violence) [2000] 2 FLR 334
the child’s resistance appears to exist.’ In contrast, in public law proceedings, professionals have been found by Alexander et al (2016) amongst other academic research, to frame children experiencing domestic violence as being at greater need of protection, and thus warranting less weight being placed on their views. In that regard, professionals speak for children who might be traumatised by the ordeal of speaking.

Similar problems greet children who wish to attend their own Court Hearings where, despite explicit provision in the Rules44 that they attend (unless the Court rules otherwise) children’s presence in Court had largely ceased by 1994. Since then children’s attendance at Court has become so uncommon that when it does happen, it constitutes a complete departure to the norm. Indeed, by explicitly linking children’s participation with children’s ‘best interests’ or welfare in his 1994 Judgement on the issue of children attending Court, Wall J45 (as was) implicitly framed this version of children’s participation as something risky and un-protective. Children’s attendance at Court, where they might be heard and informed, has come to be paradoxically, the exception to its own Rule because now:

‘there must be good reason for the Judge to see the child, and it must be perceived by the Judge that it is in the interests of the child to see him’.

Whilst the test devised by Jackson J (as was) in 201146 has specified a framework as to which ‘welfare’ factors are important to determining whether children’s attendance at Court is in their best interests or not,47 the implication of this Judgement is that children cannot simply attend their Hearings, (even if they knew they could) because the presumption that they attend unless there are reasons to exclude, does not apply.

Coinciding with the marked decline in children’s attendances at Court is a marked increase in an informal practice, where professionals encourage children to write letters to the Judge to

45 B v B (Minors) (Interview and Listing Arrangements) [1994] 2 FLR 496
46 Re K (A Child) [2011] EWHC 1082
47 the child’s age and level of understanding, the nature and strength of the child’s wishes, the child’s emotional and psychological state, the effect of influence from others, the matters to be discussed, the child’s behaviour, practical and logistical considerations and the integrity of the proceedings.
directly express their ‘wishes and feelings.’ Indeed, these practices receive, in my experience, strong institutional support. Consequently, whilst no research exists that focuses on this practice, unique it seems, to Children Act proceedings, it is a practice professionals use as an alternative albeit supplemental way to convey the ‘wishes and feelings’ of a number of children to the Court. Whilst superficially this might be regarded as an attempt at bolstering the child’s participation, in practice it often operates to placate children who wish to speak to the Judge directly by being physically present. It might therefore be argued that substituting the child’s attendance at hearings with a letter to the Judge serves merely to build in a further layer of professional participation and create more distance between the child’s voice (and views as it is likely children are circumspect about what they can say) and their Court Hearing. As we will see in chapter 6, while professionals feel such letters are worthwhile alternatives for what they perceive are the more difficult direct versions of participation, the proceedings-experienced participants attribute this version of participation much less beneficial meaning.

Equally important are the multitude of reasons that have been highlighted across the academic literature, as to why children might feel uneasy about or indeed unaware of their opportunities to participate. Primarily these concerns focus on the importance of informing children about their participation, which by implication, means that professionals have to inform children about their participation opportunities. According to Schofield (2005), placing value on children’s participation in social work practice would expand opportunities for the mutual sharing of information and understanding, and thus create participation as a protective practice. Bell (2015) found that children shied away from participating because, in the absence of having information about the reality of Court, they relied on their (false) impressions about Court as depicted on television. In that sense, being ill-informed about the ramifications of attempting to be heard also results in children’s increased marginalisation.

The literature also highlights how, in the context of child protection procedures, evidence gathering processes, which rely on children to speak, have been implicated in detrimental outcomes for those children. This is important because it highlights the very difficult line professionals need to tread when attempting to gain information from children in ways that are
beneficial for those children. These include being mindful of the stress children associate with the insensitive handling and repetitive nature of relating accounts about their experiences to different professionals (Berelowitz et al, 2013; Eastman, 2014); the stress and on occasion, trauma, associated with the way initial ABE interviews are conducted, including issues around time constraints, a lack of child consultation and poor interview environments (Davidson et al, 2006); their feelings of powerlessness, mistrust and abandonment when their speaking out is used to trigger processes that did not match their expectations or understanding of events (Woolfson et al, 2010).

These final examples from the research literature perhaps best illustrate the inter-related and connected ways in which the concept of ‘listening’ goes hand in hand with the concept of the ‘child’s voice’. In that regard, Motzkau (2007, 2009 and 2010) reminds us that the question of listening to and placing weight on what is said by children in welfare and justice contexts has a complicated history. Given the potential use of ABE interviews within public law proceedings, pertinent for this thesis is Motzkau’s (2009) work around police officer ABE training sessions. In that work, she highlights the tensions and dilemmas professionals face operating in an environment where their tasks of securing and preserving evidence collides with rapport-building tasks necessary to supporting the child’s voice to emerge. I suggest these dilemmas reflect prevailing tensions in the Family Court, where the requirement to maintain distinct forensic/welfare boundaries, makes the status of the information professionals gain in their meetings with children problematic. This is because it involves professionals in performing practices around child participation that keep these different types of information separate. In this regard I briefly reflect on the processes of child participation that have developed in order to permit children to speak to Judges and to give evidence as witnesses, where the child’s participation is framed by competing professional ideas about welfare and justice.

The practice described as Judge’s Meeting with Children (not Children’s Meeting with Judges) re-emerged as recently as 2010, since when it has operated in accordance with the

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48 This is the interview process jointly conducted usually by a trained police officer and social worker in order to achieve the best evidence from a child during an investigation of child abuse. Ordinarily it is video recorded and is regularly used in criminal and some family cases as the child’s evidence (in chief)
Guidelines.\textsuperscript{49} The criteria\textsuperscript{50} that are applied remain, I suggest, tightly regulated by a conflation of welfare, developmental and justice-related discourses. The Guidance makes it clear for example, that ‘the child’s meeting with the judge is not for the purpose of gathering evidence’ (paragraph 5), which often operates to frustrate or at the very least limit the purpose or expectations children might have of any such meeting, as they might expect to talk precisely about their case (paragraphs 1(ii) and (iv)). Further, whilst it is suggested that the child’s chronological age is relevant but not determinative (paragraph 3), making these meetings contingent on professional assessment about whether the meeting ‘accords with the welfare interests of the child’ (paragraph 1(iii)) must operate to limit or exclude children who might wish to attend but are professionally framed as too vulnerable, innocent or immature to do so. Thus, in order to preserve the evidential value of the proceedings, those children who are permitted to attend a Judge’s Meeting with Children are met with a formulaic practice, a tightly regulated, and likely awkward, encounter where they are made to understand that they are not free to talk or to engage about their proceedings. Ultimately Judge’s Meetings’ have little to do with the child’s voice or speaking, as children are not permitted to reference their case.

Also, until 2010, the presumption was also very much against children attending Court as witnesses.\textsuperscript{51} The matter of Re W\textsuperscript{52} neutralized that presumption, replacing it with a litany of factors which coalesce around two competing and often discursively mutually exclusive considerations: the advantages that the child’s evidence brings to the determination of the truth against the damage it may do to the welfare of this or any other child. Importantly, these factors provide no foundation for a bespoke evaluation that includes the potential advantages giving evidence might bring to the child’s welfare or indeed the potential disadvantages of being prevented to rely on the child’s evidence, in terms of finding the truth (Cooper, 2014). The advantages as constructed in the Guidelines are those brought to the case only, thus implying

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{49} proscribed by the Family Justice Council’s ‘Voice of the Child’ Committee 2010
\item \textsuperscript{50} Guidelines for Judges Meeting Children (2010) 2FLR 1872 (n29)
\item \textsuperscript{51} LM v Medway Council [2007] EWCA 9, Smith LJ said; ‘The correct starting point . . . is that it is undesirable that a child should have to give evidence in care proceedings and that particular justification will be required before that course is taken. There will be some cases in which it will be right to make an order. In my view they will be rare… The Judge will have to balance the need for the evidence in the circumstances of the case against what he assesses to be the potential harm to the child’
\item \textsuperscript{52} Re W (Children) (Abuse: Oral Evidence) [2010] UKSC 12
\end{itemize}
\end{footnotesize}
powerfully that there are no advantages to children giving evidence. In that sense, the provision and use of ABE recordings, taken during the preliminary stages of a child protection investigation, combined with the broad scope of admissibility of evidence that exists in Family Courts, means that children’s evidence is less important to professionals in terms of establishing facts. It also means that the special measures that now exist in Family Court cases to protect children from the potential harm of giving evidence in a Courtroom, such as the use of video links which avoid the child’s physical attendance at Court, will always be preferred to the child’s actual presence, no matter what children might wish in this regard.

2.2.2 Participation-through-Competence

As discussed in chapter 1, provision exists in the Children Act 1989 and its related provisions for children to instruct their lawyers directly. Those provisions notwithstanding, in Masson and Winn-Oakley’s (1999) research, which focused specifically on children’s representation in care proceedings, they found no children in the 20 sets of proceedings they observed had been found sufficiently competent to instruct their Solicitor directly, and thus only gave their ‘wishes and feelings’ to the Court through their Guardian. This perhaps exemplifies the point made by Moran-Ellis and Tisdall (2019), that competence creates an all-or-nothing threshold for children in Court proceedings. Importantly, children who do not pass this threshold, seldom participate in their own proceedings other than through their Children’s Guardian (Freeman, 2007). So, competence is a vital component of participation as without being competent, children cannot instigate, pursue, defend or respond to proceedings by giving Instructions directly to their Solicitor. As we also saw in section 2.1.2 above, age and maturity are also important constituent elements of all versions of child participation that are supposed to give children a voice. In that regard it is important to reflect more closely on the ramifications of House of Lords’ decision in the Gillick case53 that I introduced above, as this case still underpins how competence is to be understood and practised by professionals.

53 Gillick v West Norfolk and Wisbech Area Health Authority and Another [1986] AC 112, [1986] 1 FLR 224
In order to satisfy the Gillick test children must demonstrate ‘sufficient understanding and intelligence to be capable of making up his own mind on a matter requiring a decision’ [para 186]. The practical implications are, according to Fortin (2009) that organising and regulating participation around professional assessments of age and maturity puts this version out of reach of most children. Moreover, that it is ‘not enough that she should understand the nature of the advice, which is being given: she must have a sufficient maturity of mind to understand what is involved’ perhaps hints at the high benchmark that this test imposes, meaning inevitably ‘in the overwhelming majority of cases the best judges of a child’s welfare are his or her parents’ [para 188].

Moran-Ellis & Tisdall (2019) suggest the notion of competence has become so axiomatic in practice that its actual ambiguity is difficult to challenge. This is despite Fortin’s (2009) concern that Gillick competence variously and inconsistently infers mental capacity, rationality, intelligence, emotional and psychological maturity. The implication is that competence has become ‘one of those concepts so easily grasped, or apparently so, that it has tended to be treated as if it were unproblematic’ (Freeman, 2007). Ordinarily then, as found by Vis, Strandhu, Holtan, & Thomas (2011) in their scoping review around child participation in private law proceedings, dominant and prevailing ideas about children’s competence have presented barriers to children’s participatory opportunities rather than supported them.

Perhaps unsurprisingly, age was found prescriptive in terms of participation opportunities across the academic literature, where commonly younger children were found less likely to receive information, be listened to or exert influence over decisions (Berrick et al., 2015; Healy & Darlington, 2009; Vis & Thomas, 2009). Illustrative, I suggest, of how strongly ideas about welfare-through-protection influence decisions around child competence, is the finding that generally, children who participated the least, no matter what their age, were those whose cases involved allegations of abuse or neglect (Vis & Thomas, 2009) or which were assessed by social workers as “high risk” (Stanley, 2013). As Callaghan et al (2018) highlight, the tendency for adults to define children’s competence as mitigated by emotional dysregulation caused by their experiences of harm (in their research, forms of harm attributed to domestic
violence) means that children who need to be heard the most are by default less likely to be, precisely because they are ‘victims.’ Similarly, in their research around the Solicitor-Guardian dyad in care proceedings, and thus relating to ‘high risk’ children, Masson & Winn-Oakley (1999) found that protection-focused practices stifled the ability of even competent children to participate. Indeed, some academics (Lee, 1999; Qvortrup, 2015) argue that these practices place children who wish to participate under a lot of pressure to actively prove their competence. Seen in this light, the findings of Cossar et al (2014) are perhaps doubly pertinent because by framing children through deficit, professionals inadvertently deprive children of the very qualities they need in order to ‘normalise’ childhood: confidence and feelings of safety and self-efficacy. Willow (2010) posits that wider implications for children are, perhaps ironically, that they are precluded from contributing towards their own child protection plans. Lundy & McEvoy (2012) argue that decisions that limit children’s access to information also create a deficit in knowledge, preventing them giving their informed views. Pertinent to the assessment of a child’s understanding then, and thus Gillick competence, is the related issue of knowledge. Demonstrating ‘sufficient understanding and intelligence’ that allows a child to be ‘capable of making up his own mind on a matter requiring a decision’ [para 186] is of necessity predicated on being able to access information. The implication is that children cannot give informed views, that is, participate, if key pieces of information are withheld from them. It might be argued that it is somewhat of a paradox to judge child competence while also withholding information that is reasonably required to inform those very decisions, even if the reasons for doing this are referenced by the professional ‘urge to protect’ children from ‘knowing too much.’ Pinkney (2011, 274) refers to this quandary facing professionals as one where ‘as well as protection from abuse and harm, children also need protection from information’. Tisdall (2016) argues that the reason this dilemma exists at all is because of the conflation of knowledge with concerns about welfare. For her, foregrounding welfare-based concerns about the (assumed) traumatic and corrupting nature of knowledge - knowledge that is considered by professionals as both too painful to know and too painful to discuss, despite paradoxically being same knowledge that constitutes children’s personal experience – further limits participation opportunities for all children including those who might otherwise be deemed competent.
Indeed, providing only scant details to children has been found across the social work literature to negatively affect children’s ability to participate in the decision-making processes about them, whether this be about a move to foster care (Morgan, 2014); the reasons for their removal into foster care (Leeson, 2007); or information about the child protection system to which they are subjected (Murray & Hallett, 2000). Importantly in the context of this research, Woolfson et al (2010) have impressed the value in sharing information with children so as to avoid the risk of their views being misrepresented by professionals acting as their proxy. The challenge set to professionals by Morrison et al (2019) is therefore pertinent: to embrace the idea that children can be both competent social actors in need of participation and vulnerable beings in need of protection.

A further complexity to the debates around participation in child protection work is how professional ideas about children’s agency have become conflated with professional ideas around children’s competence (Prout, 2005, 2011). As noted in chapter 1, conceptually ‘agency’ and ‘participation’ share common ground given when children participate, they are assumed to be capable of exercising agency (Wyness, 2015). A common criticism is that because ‘agency’ has become reified as ‘individuated agency’ (that is, located in the individual), it operates separately from context and social environment, which by virtue of their positioning generally in society places children at a significant disadvantage (Oswell, 2013). In consequence, the relevant literature expounds that the common understanding of agency as the ability to exert a level of control or influence over one’s life does not seem to apply in relation to childhood. Tisdall (2017) suggests, that this approach to ‘child agency’ reflects the entangled and conflated space it shares with the construction of childhood as universal (discussed in chapter 1.4.1). This observation resonates with child protection research (Ackermann, 2017; Abebe and Kjørholt, 2009; Kesby et al, 2006) where it has been found that children’s participation has become so contingent on universal framings of children’s vulnerability that social workers struggle to envisage children as having the type of agency that is sufficiently compelling to warrant their active involvement in family interventions.
Moreover, constructing agency (and by extension, participation) through various lenses of competence hides from view what Callaghan et al (2018) refer to as the ‘capacity for agency’ or Karlsson (2018) terms ‘tactical agency’: that in a world that is otherwise experienced as controlled by others, opportunities to exert influence over, to control or indeed to contravene institutional rules that monitor and regulate their behaviour serve a significant and important purpose for children. Importantly, what their research also highlights is the very nuanced ways in which children strive to reassert themselves in contexts where they have little power or influence. In this sense, these academics join others (Lee, 2001; Tisdall & Punch, 2012; Oswell, 2013), in problematizing how the adult tendency to overlook these spaces of agentic possibility reinforces children’s passive and dependent positioning. For instance, Tisdall & Punch (2012) remind us that children who ‘refuse’ to participate or assert their agency as expected by adults, might be exercising agency to not participate, rather than displaying a lack of competence. In the context of children who have experienced domestic violence, a form of abuse that regularly features in public law proceedings, the research literature explores the important and highly nuanced ways in which children were able to exercise (limited) agency over their lives by creating a safe space from the throes of danger around them (see Callaghan et al, 2016e; Callaghan et al, 2018). According to Callaghan & Alexander (2015) these small but significant pockets of resistance help children restore a sense of control over their lives when others seek to overwhelm and dominate them. In following Ackermann (2017), it could be suggested that these important moments of resistance are easy to miss or misinterpret, with significant consequences for children in terms of how they might participate. Similarly, Bordorano & Payne (2012) and most recently Morrison et al (2019) question why children who challenge social behavioural norms and assert themselves are constructed as risk-takers, irrational and acting with limited, ‘ambiguous’ or ‘bad agency’ instead of being understood as expressing agency. Thus, agency becomes determined not by the ways in which children exercise agency but by the risk their behaviour poses to social order (Hanson, 2016). As we shall see in my analysis chapters, in these instances, children occupy contested spaces where they disrupt and problematize traditional constructions of childhood and are defined by their ambiguity because they blur the lines between adulthood and childhood, knowledge, competence, innocence and choice.
Academics including Woodhead (2015) and James & James (2004) have argued that discounting the views of children perceived to be exercising bad agency seriously risks occluding how they might otherwise identify their needs for themselves and thus marginalises their input. As we shall see in chapters 5 and 6, if children are not ‘on side’ with decisions professionals have reached about their welfare needs, they might respond in ways they perceive as legitimately agentic in the circumstances but be perceived by professionals as ‘bad agency.’ The paradox is that from the perspective of the professional, these children are behaving in ways that are un-protective, whereas children perceive themselves as responding to overly protective or enhanced forms of protection that do not work for them.

2.3 Conclusion

Across this chapter I have examined the theoretical and often polarising debates that frame approaches in a child protection context to welfare and participation. This has been an important exercise given, as we will see in my analysis chapters, these are the debates, challenges and tensions with which my participants expressed struggling.

I have argued that the meaning given to welfare in public law proceedings is one that conflates discourses of paternalism and prevention with protection, to mean total or enhanced protection. I term this discourse welfare-through-protection. This might seem a simple, common sensical and straight-forward notion, and on one level it is. It provides a mandate for the protection of children. However, what I have also demonstrated is that the discourse of welfare-through-protection is a highly influential discourse that produces practices mobilised by the ‘urge to protect.’ Thus, relying on expert knowledge from psychology and science, operate as highly influential and powerful modes of thought by which to frame childhood as a time of passivity, dependence and vulnerability. In this version of childhood, there is little room for children to speak, or indeed, need to speak. This is because the ‘urge to protect’ mandates practices akin to super-surveillance conducted by experts in total protection. These are experts who understand childhood and can be relied upon to protect childhood and by extension, protect what is taken-for-granted as being in children’s best interests.
Importantly, however, what the relevant academic literature highlights is that the tendency to assume that childhood is something that can be known, overlooks the diversity of childhood and the unique nature of children’s experiences. By drawing on the academic literature I demonstrate how generalising about childhood in public law proceedings, through the discourse of welfare-through-protection, might restrict children’s opportunities to participate. As we shall see in my analysis chapters, versions of participation that professionals find easier to support are those versions of participation that very much foreground and substitute child participation with professional (or proxy) participation. This is a primary paradox of participation as restricting children’s opportunities to participate to only those perceived to carry no risk, has made children’s participation meaningless. Another primary paradox of participation is that which makes all forms of participation beyond professional (proxy) participation contingent on professional assessment because by inevitably foregrounding the potential for harm (and entirely overlooking the benefits), participation becomes impossible to imagine.

I have also highlighted a number of paradoxes around participation, where drawing on discourses of agency, voice and rights produces contradictory propositions around child participation. As we have seen, listening to the child’s voice, sharing information with all children and placing weight on children’s views are all key components of supporting meaningful child participation. However, the academic literature highlights that achieving such a version of participation is difficult without holding in mind professional/child interactions and the new spaces of possibility for participation that might subsequently emerge. What is also clear, however, is that when it comes to child protection, it is easier to aspire to these ideas than to practice them. As we shall see, however, when participation is not meaningful, children, paradoxically feel marginalised further from the decision-making processes. Their lack of participation is in that sense, un-protective.

Over the course of the next two chapters I offer a brief outline of my theoretical framework and the research methods I used.
CHAPTER 3 - THEORETICAL AND METHODOLOGICAL INFLUENCES: DISCOURSE AND AFFECT

Introduction

The theoretical frameworks I draw on in this research are the discursive perspective (Foucault; Potter & Wetherell, 1987) and the affective perspective (Wetherell, 2012; Greco & Stenner, 2017; Motzkau & Clinch, 2017; Kofoed & Stenner, 2017)). Pivotal to a consideration of the discursive perspective is the work of Michel Foucault, and others who have engaged with his ideas. In this section, I argue that situating this research within a discursive/Foucauldian perspective provides me with a platform from which to critically examine and challenge notions of truth as embedded in certain understandings of welfare, childhood and child participation. Key to that exercise are Foucault’s ideas about power and its relationship with knowledge. Thus, utilising his work around the panopticon or ‘gaze’, and the notions of pastoral power and disciplinary power/bio-power, provides a helpful perspective from which to consider how institutional practices are imbued with notions of power and knowledge.

Further I will consider the role of affect. In so doing, I am informed by a number of ‘affect theorists’ but notably Wetherell (2012), Greco & Stenner (2008) and Stenner, Greco & Motzkau (2017) who have used discursive techniques to draw attention to how positions drive or are driven by affect. Wetherell’s notion of affective practice (2012) proposes that affect and discourse occupy an entangled space in life; as such, attempts to investigate discourse without referencing affect can be counterproductive. Paying attention to both, she suggests, opens up a space to notice how individuals react as they interact. This will be of central importance for analysing my own data. Further, I argue that the notions of ‘liminal hotspots’ (Greco & Stenner, 2017; Motzkau & Clinch, 2017) and ‘homeless affect’ (Kofoed & Stenner, 2017) are important to my research as they provide the means to explore some of the consequences spoken about by participants in this research when they appear to become stuck or suspended ‘betwixt and between’ the paradox demands of ‘doing’ child participation and protecting children.
3.1 Foucault and the Role of Discourse in Power Relations

Foucault’s ideas about power and subjectivity are key to my research because they provide a useful theoretical platform from which to both problematize certain understandings of welfare, child participation and childhood and critically question the social systems or institutions that assert the authority to fix meaning to people and the relations between them. It is important therefore to provide an overview of the insights in his works and to demonstrate how these might affect the understandings commonly associated with child participation in public law proceedings.

Notably, Foucault rejects the notion that history was organized around a natural trajectory aspiring towards higher knowledge. For him, history is organized around shifts in power/societal conditions and its relationship to knowledge. His interest in discourse therefore was related to its role in constituting and mediating knowledge, social practices, subjectivity and power relations (Foucault, 1987a). In his early archaeological texts, Foucault examined the continuities and discontinuities or ruptures between systems of knowledge (epistèmes), positing how they emerged in non-linear, unpredictable ways that reflected shifts in societal power (Foucault, 1972, 1973). Shifts between epistèmes, he argued, occurred contingently - without teleology, causality or continuity, but jarringly - and radically altered what it was possible to think, to know, to be and to do. The one predictable characteristic across epistèmes was that one inevitably superseded another.

The contingent nature of knowledge means, in Foucauldian terms, that it can only ever be partial and likely non-replicable because it:

‘manifests a history which is not that of its growing perfection, but rather that of its preconditions of possibility’ (Foucault, 1970, xxiii-xxiv)

Through his later genealogies, Foucault spoke about discourse as entangled systems of power and knowledge; ‘power/knowledge’ (Foucault, 1997a; 17) that define and regulate social
institutions and practice. In this regard, Foucault’s gaze fell more on an interrogation of how (historically) specific discourses came to shape and create the meanings or truth systems that fix how we define and organize both ourselves, and our social world. Thus, Foucault regarded discourse as reflecting particular worldviews that wrapped around historical moments: the customs, culture and knowledge that formed the bedrock of social relations and the ideology of the time, used to control the population. As ‘practices that systematically form the objects of which they speak’ (Foucault, 1972: 49), discourse can be said to occupy heterogeneous sites of ongoing struggle between conflicting claims to truth, knowledge and power. This explains, according to Foucault, how certain discourses become very powerful at specific times and come to implicitly order people’s thinking and the way they make sense of the world, and their actions. Crucially this means, in Foucauldian terms, that the delineation of ‘proper’ ways of thinking and behaving from the improper, constrains alternative ways for thinking and behaving. The question of why and to what cost other discourses remained consigned to the margins was pivotal to Foucault’s writings. For him, subjugated discourses are potential sites from which to challenge, resist or contest prevailing hegemonic practice.

Key to my research is the idea that there is nothing essential about the notions of ‘welfare’, ‘childhood’ and ‘child participation’: they have not been ‘lying in wait’ (Foucault, 1972) for those disciplines through which they have latterly been discursively constituted and interpreted, to emerge and claim them. Instead, for Foucault, those notions are but objects constituted by various shifts and ruptures in discourse that have led to the currently available understanding of those ideas. Interestingly, by highlighting the historically contingent nature of knowledge and truth as constituted in discourses that emerged within the Modern epistème, Foucault also carves out space for other possibilities. Thus, to think beyond the limitations that Modern notions of ‘welfare’, ‘childhood’ and ‘child participation’ impose and inhere as conceptually integral, means acknowledging power relations, and how they might be challenged and shifted.

As we shall see, Foucault radically re-defined the notion of ‘power’. According to Foucault, classical understandings of power as the manifestation of force or coercion through acts of physical violence, is only and inevitably a partial one. For him, that account of power
underestimates and limits its function to one of ‘censorship, exclusion, blockage and repression’ (Foucault, 1980c; p59). Instead, Foucault argued that power constitutes a ‘productive network’ (Foucault, 1980a; p119) permeating the very fibre of society. The reason that Modern relations of power are so effective at producing ‘normal’ subjects, he postulates, is because individuals ultimately tend to self-govern in accordance with social norms expounded across the values learned in the home, school and across society. For that reason, power need not be overtly oppressive - it need not say ‘you must not’ (Foucault, 2007: 154), because its power lies in its productivity and dispersal through all relationships. Accordingly, power is not concentrated in any one person or institution, but is diffuse across society:

‘judges of normality are everywhere. We are the society of the teacher-judge, the doctor-judge, the educator-judge, the ‘social worker-judge’ (Foucault, 1977b, 304).

According to Foucault, power produces subjects. Indeed, for Foucault, the individual is ‘one of the prime effects’ of power (Foucault, 1980f, 98) because power produces the position from which a person acts with respect to themselves and others (Foucault, 1983a). Importantly however, whilst Foucault advances that power ‘becomes a machinery that no-one owns’ (Foucault, 1980e; p156), he is clear that this does not mean that everyone occupies the same position within that machinery. Subjugation, powerlessness or disadvantage may very well be the effects of power for some whilst for others it can be empowering or advantageous. Thus, an important consequence of power is that it produces unequal power relations and hierarchies. Likewise, Foucault advanced that within power relations always lurk opportunities for resistance (Foucault, 1978). Inherent in those complex interactions therefore, potentially, sits a paradox where all individuals might occupy a spectrum of positions vis-a-vis dominant discourse, being simultaneously endowed with and divested of autonomy by contemporary power relations. Reflecting his insistence that ‘where there is power, there is resistance, and yet, or rather consequently, this resistance is never in a position of exteriority in relation to power’ (1978, 95) implies an ability to act. Power relations exist then not simply in dominant discourse, but in the way these articulate or merge, often unpredictably, with local practices, marginalized discourse, and the subjective filtering or translating of those discourses by individuals exercising a level of agency (Foucault 2007; Thompson, 2003).
For the purpose of my analysis Foucault's notions of disciplinary power, bio-power (Foucault, 1990a) and pastoral power are especially pertinent as they make visible some of the ‘disciplinary mechanisms, techniques of surveillance and power-knowledge strategies’ (Knights & Willmott, 1989: 549) embedded in institutions and which Foucault believed influence thinking and shape practice. My intention is therefore to unpack those briefly here. Whilst there is a tendency for Foucault to overlap these notions, I will treat them as distinct, albeit related frameworks of power.

3.1.1 Disciplinary Power as a technique to set, instill and manage the rules

As discussed above, Foucault’s primary claim is that power is not simply repressive but is always productive. What interested him was how modern power produces, legitimises, affects and normalises certain forms of subjectivity rather than others. For Foucault, the way modern power operated is more insidious and relentless than it once was. It does not seize and overwhelm bodies physically. It trains them, drills them and ‘normalises’ them, often in subtle, almost ephemeral ways that are difficult to challenge or resist. This is the form of power to which I elude in chapter 2.1 that excludes alternative social understandings of childhood and perpetuates the normalizing judgments of childhood professionals, such as social workers and doctors, about what constitutes a good childhood.

Exemplified in his interrogation of prisons, Foucault sought to reveal the more perfidious forms of power beyond the act of simply locking up criminals, notably how through the unrelenting act of surveillance prisoners are coaxed to become arbiters of their own behaviour. This process by which power is normalized is illustrated by Foucault’s use of the image of the ‘Panopticon’ a maximal-surveillance scheme originally developed by Jeremy Bentham (1748-1832). Its simple design, which envisaged a central observation tower, offered the potential for ceaseless surveillance of the prisoners, whose cells were organized in a circular pattern around it. However, the opaque windows of the tower occluded the ability of the prisoners to know whether and when they were actually being observed or not. In the context of prison life then, it is those routine inspections, the supervised mealtimes, monitored and regulated work shifts,
and recreation overseen by a host of prison staff that ‘gives power of mind over mind’ (Foucault, 1995: 206). It is this disciplinary power that Foucault conceived as producing obedient people or ‘docile bodies’ (1977, 171) who are practiced in the art of knowing how to behave. What emerges is a type of power that is no longer aimed at solely shaping or drilling the body, but one that places the body within a machinery of power, aimed at producing standardized bodies engaged in useful behaviour.

For Foucault, the observation of people’s behaviour in public spaces such as through CCTV, is just one such way that encourages a strong regime of self-discipline, inevitably and ultimately transforming people into self-governing souls, inculcated with the know-how to regulate their own behaviour (Peek, 2009). Childhood professionals are also subject to the effects of disciplinary power in the way that their practices are themselves tracked through their paperwork, assessments and clinical supervision. Read this way, these are tools that are designed and used to ensure optimum delivery of their services in accordance with prevailing policies and guidelines. Thus, the effect of disciplinary power, as described by Foucault, is to manage the internalization of designated roles and practices. In terms of my research, Foucault’s concept of disciplinary power provides a lens through which to examine how regimes of self-discipline are operating within public law proceedings and thus frame how professionals practice and how children experience child participation.

3.1.2 Bio-power as a technique to set and manage standards

The concept of bio-power is also important for this thesis in that it provides a theoretical framework to understand how the power/knowledge nexus operates to create standards for childhood and professional practice by marshalling knowledge about children. Building on the concept of the efficacy of disciplinary power, as exemplified by the Panopticon, Foucault continued to refine his analysis to illustrate how the objectification of Self has empowered specialists to control normative standards, through discourse around normative practices, in which individuals become positioned in specific ways. More insidious than merely the practice of disciplinary power as the gaze on human bodies, is what Foucault suggests is the penetrating gaze of bio-power. According to Foucault (1973), bio-power is exercised across all social spaces and from birth to death, to regulate, supervise and collate information about the health
of entire populations. Crucially, and as discussed in chapter 2, as the most intensely scrutinised period of the life-cycle, bio-power can be seen to be exercised through multiple social spaces across childhood, often concurrently, through developmental, educational and neuropsychology, social work and health initiatives. Importantly for Foucault, supervision and regulation are only effective if they operate within a system of norms or dimensions through which life and behaviour can be measured, qualified and revised in accordance with the utility and value of the behaviour (Foucault 1978; 1977; 2003). As we have also seen in chapters 1 and 2, those systems are deeply embedded both across childhood and child protection and frame how children are perceived and understood. Similarly, across his genealogical work, Foucault traces how privileged voices claim significant authority and influence over the objects of their examination, evidenced through intensified practices of monitoring and recording individuals. The analysis of bio-power is concerned then with the ways some groups have become entitled to draw on abstract standardised notions to formulate judgements about the minutiae of a single life.

Expanding on these ideas, Burman (2017) highlights how the use of IQ testing, developmental milestones and attachment theory have become mass monitoring tools, overseen by caring experts in the field of social work, psychology and health in ways that have now become standard welfare policy. Importantly, whilst beneficial for those who meet the standards prescribed, these monitoring tools bear significant implications for those who do not. Pertinent for my thesis is the point that in setting standards, experts also set the boundaries for what does not constitute normal and make assumptions about what that means (see Rose, 1989; Holt, 2018). The essential point about these ‘dividing practices’ (Foucault, 1971, 1973, 1977) is that they carry consequences for the individual by positioning, defining and treating them according to their ability to attain/represent particular norms. Inevitably some become marginalized and defined by their difference or otherness.

Foucault illustrated how relations of power had become fundamentally re-arranged through the emergence of new surveillance and scientific techniques, which make it possible to create new kinds of hierarchies and exclude certain types of individuals (Foucault, 2003). Ultimately, Foucault believed that systems that regulate and correct through the use of normative
yardsticks and specialized normative discourses will eventually usurp and govern traditional bulwarks like the Law itself. A key point pertinent to this research is therefore what is meant by ‘welfare’ or ‘best interests’ given the potential for continuous change as it becomes conceptually laced with discourses co-opted from other disciplines (in public law proceedings this includes social work, psychology and medicine), which in turn lends itself to re-interpretation by experts in those fields. As Foucault (1978) ventured:

‘Such a power has to qualify, measure, appraise and hierarchise rather than display itself in its murderous splendour … it effects distributions around the norm… the law operates more and more as a norm, and … the judicial institution is increasingly incorporated into the continuum of apparatuses (medical and administrative) whose functions are for the most part regulatory. A normalizing society is the historical outcome of a technology of power centred on life’ (p144).

Ideas associated with disciplinary and bio-power also go some way to explain the treatment of ‘childhood’ and ‘children’ as a separate category in need of separate treatment in society. As such, children come to be segregated, institutionalised, categorised and regulated across all aspects of their lives. These ideas also go some way to explain why when children fall outside of those normalising discourses, which we shall see in the analysis chapters is one of the effects of professional discourse, they struggle to be heard and to speak. Read this way, the universal and almost naturalized ways in which childhood is constructed, is understood as a product of this normalizing power encountered across contemporary society and reinforced by the production of knowledges within and across the professional disciplines.
3.1.3 Pastoral power as systems of management

I have argued in chapter 2 that a distinguishing characteristic of public law proceedings is how it operates on the basis of welfare-through-protection and thus pursues child protection and safeguarding over all else including the child’s participation in their own proceedings. As such it makes it a potentially revealing site in which to confront the multiple ways pastoral power operates to constitute and position professionals as ‘pastors’ and children, by implication, as part of their ‘congregation’ or ‘flock’. Conceptually then, the notion of pastoral power might help account for how the public law proceedings arena perpetuates the idea that professionals hold far-reaching authority over children.

Foucault (1983b: p215) argued that Modern power relations are characterized by ‘a new form of pastoral power’ that renders individuals susceptible to more insidious forms of discipline. Pertinently, pastoral power is organized around the wellbeing of a population and thus provides a way to investigate how institutions such as health and social care have become so important to the functioning of the family. Once a religious imperative, secularized pastoral power is commanded by those whose authority:

‘requires the confession, prescribes and appreciates it, and intervenes in order to judge, punish, forgive, console, and reconcile’ (Foucault, 1978: 61-62).

Termed a ‘power of care’ (Foucault, 2007: p127), pastoral power is characterised by how the ‘pastor’, for instance, the social worker, comes to be accepted as benevolently exercising their expert knowledge in the best interests of another or others (their flock). As we know, the role of the professionals working in public law proceedings is to hold in mind the child’s welfare as their paramount consideration. As discussed in chapter 2, when welfare is understood primarily through notions of protection, professionals (notably social workers and Guardian) are positioned as their custodians, entrusted to keep them safe from all forms of harm and risks of harm, including those perceived to arise from their potential participation in their proceedings. On the other hand, children are positioned as vulnerable and dependent on professionals to
both protect them, (which involves speaking in Court on their behalf) and to provide for their care, (which includes making decisions and formulating plans about their welfare needs).

Importantly, the effectiveness of pastoral power resides in the way the flock is coaxed or recruited to actively adopt and participate in the practices and activities preached by the pastor as part of moral propriety or their ethical code (Foucault, 1982). These forms of expert knowledge therefore come to constitute how individuals think about and understand themselves. Importantly however, it is precisely the perception of the beneficent nature of pastoral practice that reinforces the status of pastor as both expert and thus arbiter of normative ways of being. Consequently, it is the lack of ability to challenge pastoral power that perpetuates the pastor’s expertise and allows them to develop tools to test those notions to ultimately achieve self-governance (see Rose: 1985, 1989, 1996). The implication is that the actively participating individual is constrained by the models of conduct that are available culturally, which limit the choices available to individuals and thus fetter individual autonomy. Thus, Foucault’s (1972) ideas about how models of conduct constitute a field of practices through which agency and initiative are articulated have relevance for the study of child participation in public law proceedings. As considered in chapter 2, pertinent to my research is, for instance, how discourses that privilege protection invoke a strong commitment and motivation from adults to act in ways that they feel simultaneously promote children’s welfare and safeguard children from harm. However, because these acts both imply and moreover expressly provide a mandate for professionals to act in ways that proscribe the child’s own participation, the child’s ability, and right even, to make their own informed choices, becomes problematic in itself.

These final observations about Foucault’s work also remind us that people are not simply passive objects, shaped and designed through power, but that they actively interact with power to shape their own behaviour and actions. This involves individuals in displays of agency or resistance. Pertinent to my research is how professionals and children involved in these practices talk about their role in the process of child participation; how they accept or resist that process and at what cost they each do it. In this regard, using affect and affective practices are helpful tools by which to examine the personal cost of participation to my participants.
3.2 Affective Practice

Morrow (2011) reminds us that discussions about children and childhood can be challenging and emotive. In this regard, emotion and affect form an essential ingredient of how people construct values and meanings and are thus inseparable from how the social world is understood and navigated (Wetherell, 2012). Overlooking the role of affect in analyses of social phenomena can also compromise the broader understanding of social organisation and power (Barbalet, 2006). This perhaps explains why even outside the realm of child protection, research has looked at the role of affect in regulating child participation. It has been found, for instance, in environments that might in comparison be considered affectively neutral, that the emotionally charged representations adults hold of childhood as a time of protection renders the child’s participation problematic (See Joassart-Marcelli and Bosco, 2015). In other research, Kraftl (2013) has reported that children adapt their behaviour so as to display socially desirable levels of emotion to adults, and in so doing, re-calibrate what they can say and be heard to say (see Kraftl, 2013).

Within the field of child protection, it could be argued that the challenges highlighted by Morrow (2011) are necessarily amplified given the nexus of thinking about children and childhood with welfare-through-protection. So far, research in the social work field has tended to focus on confronting the impact to social workers of the ‘emotionally indigestible’ (Cooper, 2014: 271) as well as the wider social work practice-related implications that face social work professionals who need support to insulate themselves from stressful emotions associated with their work (see Vis, Holtan and Thomas, 2012). Moreover, whilst a number of studies have been undertaken, notably in the criminal sphere, to explore the affect of their work on lawyers, there is not as yet any research that explores the affect of Children Act work, let alone public law proceedings work on Solicitors or Barristers. Importantly then, this research begins that debate by looking at the affect of public law proceedings on professionals and children in that uncomfortable space where ideas and beliefs about welfare-through-protection are challenged so fundamentally by thinking about child participation.

Given the hotly contested debates as to how notions of affect and emotion are defined and
interpreted across the academic literature (Wetherell, 2012; Stenner et al., 2017; Leys, 2011), it is important to address how those notions are used in my research. Before I do so however, I must also recognize that similarly disputed across the academic literature is the place of discourse in research about affect as framed as occupying a space ‘beyond talk, words and texts, beyond epistemic regimes, and beyond conscious representation and cognition’ (Wetherell, 2012: 19; Leys, 2011; Burkitt, 2014). In the context of this research, however, and drawing on Margaret Wetherell’s notion of affective practice (2012, 2013, 2015, 2020), I argue that it is crucial to highlight the entwined nature of affect with the social or ‘cultural circuits of value’ (2012: p16).

Drawing across a wide field of literature from the contemporary work within psychobiology (notably by Damasio) to the work of the linguist, Bakhtin (1981) who was interested in theorizing about literary characters, Wetherell argues that as social actors, we are constantly seeking to make sense of experiences that affect us (Wetherell, 2013). Consequently, drawing a ‘thick dividing line between bodies and talk and text’ becomes antithetical and indeed counter productive (Wetherell, 2012, p.21). As such, affect is perceived as shaping our responses and is thus integral to the meaning-making process. The integration of affect within meaning-making processes invites and anticipates a relational connection with the social world, where conscious experience shapes affective action and reaction. Consequently, paying attention to how affect is expressed in discourse, Wetherell suggests, opens up a space to notice how individuals react as they interact with each other:

‘people swim in cultural and discursive milieus like fish in water - we are full of cultural and discursive practices’ (2012, p. 65).

Linking back to the work of Foucault, an integral aspect to affective practice is how those practices are bound up more broadly with issues of power, such as:

‘Who gets to do what when? Who is emotionally privileged, who is emotionally disadvantaged and what does this privilege and disadvantage look like?’ (Wetherell, 2012: 17).
I argue that the public law proceedings arena is a site where the re-working and re-negotiation of affect becomes a primary activity. In the context of my research, the aim is to explore affect as part of the meaning-making processes that guide certain ways of thinking about childhood and child participation in powerful, dominant and thus legitimate ways and the cost involved for those professionals and children caught up in those processes.

Importantly, analysing affect through the discursive contradictions, dilemmas and tensions that arise, offers a lens to critically examine how people negotiate and re-work affect in order to sanction, privilege or justify their experiences, in this situation, of child participation and childhood in the context of public law proceedings. It also provides a tool for making sense of the 'modes of emotional expression' (Van Der Merwe & Wetherell, 2020; 230) that inform the complex, messy and often contradictory practices that drive and inform child participation.

3.3 Liminal Hotspots and Homeless Affect

Whilst Wetherell’s concept of affective practices provides a useful tool to investigate people’s accounts about affect and the ways in which they frame their experiences, I also introduce the related concepts of liminal hotspots and homeless affect. The concept of liminal hotspots provides opportunities for tracing the affective consequences spoken about by my participants when they, as my analysis shows, appear to become emotionally stuck or suspended ‘betwixt and between’ competing and often contradictory demands on them and/or their practice/experience.

According to Van Gennep (1960), liminality relates to that transitional state which is bounded, spatially and temporally for most, in phases that constitute a ‘before’ and ‘after’. Generally, this state of limbo is perceived as both a necessary and essential but temporary process, which is described in positive and productive terms as the passing on to new becomings (Turner, 1969).

However, by virtue of its ‘in-between-ness’, the liminal phase is characterized by its uncertain and ambiguous quality, where the rules that normally define what people can feel, say and do are temporarily suspended. This means it can be disruptive, unsettling and emotionally taxing for people, and importantly, only reconciled by the successful transition through it to something
new. Notably, perspectives in recent academic literature across a variety of disciplines point to a form of liminality characterised by its permanence (Bamber et al., 2017; Bianchi and Fuskova, 2018; Johnsen and Sorensen, 2015) where people are increasingly likely to experience prolonged or sustained periods of transition and thus uncertainty (Chu et al., 2018). Greco & Stenner (2017) suggest that this is because transitions that were once delineated by specific rituals and stable social roles are breaking down:

‘disciplined social systems, which once seemed so stable and internally coherent are increasingly emphasising transience, flexible interconnection, and agility as their only permanent attributes’ (p116).

Instead, Stenner et al (2017) challenge us to think about those ‘swamping feelings’; those emotionally uncomfortable and confusing spaces in which individuals become suspended and indeed even stuck in transition as ‘liminal hotspots.’ A liminal hotspot is a term that conceives of situations where this interstitial phase of liminality becomes incoherent, boundless and endless: offering no sense of either belonging or not belonging. As such, liminal hotspots are characterized by the effort that is involved in order to unravel the paradoxes or irreconcilable events, ideas or positions that turn an event of becoming into a ‘troubled becoming’ (p 155). Thus, what was intended to be transitional interference becomes a permanent sense of limbo or a sense of being ‘stuck’ in the ambiguity. One such distinctly affective and unintegrated space that has been investigated by Motzkau and Clinch (2017) and which I suggest is analogous to that of participation in public law proceedings relates to the practice of ABE interviewing.54 They draw on the concept of the liminal hotspot to highlight the potential for professionals to experience the ‘repeated paradoxical collapse of their own practice in the process of performing it’ (p277) in attempting to do the impossible which, in conducting the ABE interview, is to produce good evidence and produce child-centred interviewing. However, because it is possible for these professionals to gloss over these enforced paradoxical practices, they find a way to carry on. Nevertheless, the continual exposure to the paradoxes inherent in practice

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54Interview process by which to achieve the best evidence from children during an investigation of child abuse.
means that they are never entirely free from the heat of the hotspot and thus never really free of the tensions caused for them.

As I demonstrate in Chapter 7, where these ideas are useful in my thesis is in understanding how professionals and children make sense of the dominance of the discourse of welfare-through-protection in thinking about child participation, where no matter how they might wish to gloss over those events and move on, those experiences continue to move them affectively. Very much mirroring the work of Motzkau & Clinch (2017), there were often occasions in the talk of my participants around being caught up in the paradoxes or ‘conceptual ‘voids’ or ‘gaps’” (p271) that left them feeling uncomfortable or trapped with the ambiguity caused by child participation. Suspended thus, the fraught nature of such processes were exposed as both good and bad, well intentioned and undermining, all at once. In other words, while ‘doing’ or indeed thinking about doing participation, participants expressed the repeated and paradoxical disintegration of their practices/experiences. Being regularly exposed to these paradoxical collapses, as both professional and proceedings-experienced participants believed they were, affects them and shapes their expectations about future practice/experiences. This is important because whilst attempts are made to gloss over these experiences/practices, the affective toll of trying to work through the discomfort they cause, lingers.

Focussing on the affective dimension, Motzkau & Clinch (2017) draw similarities between the trouble such practices cause professionals personally about their ability to do their job well with the notion of ‘homeless affect’ (Kofoed & Stenner, 2017). Homeless affect is the term that is used to conjure up the lingering and vacillating nature of affect present in those moments of paralysis. In those moments affect risks becoming permanently displaced, in that it cannot be explained away as having a systemic or any other purpose, but neither can it be addressed, expressed or shared in any way as it is felt to be a personal and inevitable part of the practice. It is in this regard that I argue the concept of homeless affect is helpful to my analysis as it provides a theoretical tool by which to shed light on how it is people try to shrug off their troubled or uncomfortable experiences relating to child participation in public law proceedings, while still remaining affectively trapped with those tensions.
3.4 Conclusion

Over the course of this chapter, I have provided an outline of the theoretical platforms from which I analyse how my participants are affected by and make sense of the practice, performance and experience of child participation in the context of public law proceedings, and its effects. Foucault’s ideas about power and its association with knowledge bring an important framework through which to examine how childhood, and moreover, certain childhoods come to be normalized, pathologised, exalted or problematized in public law proceedings, by their surveillance, categorization, institutionalization and regulation. As we shall see in chapters 5 and 7, the notion of disciplinary power helps us understand how professionals become drilled in the discourse of welfare-through-protection that squeezes some versions of child participation out of existence. This notion also helps us understand how proceedings-experienced participants felt unheard or unable to speak, or indeed felt even less able to speak because when they tried to insist on participating in more direct ways, their efforts were shut down. The notion of bio-power helps us understand how it is some groups, such as social workers and Guardians, become entitled to draw on universal notions, such as child development to underpin their assessments about individual children in individual families. This notion helps to explain the importance of monitoring and super-surveillance to processes of enhanced child protection and why it is that those children who fall under its gaze feel different and singled out. Being singled out was an expression used by a number of my participants and which necessarily forms an important part of my analysis across chapters 5-7. Pastoral power is a notion that helps shed light on how the ‘urge to protect’ underpins professional practices with the result that children’s participation in their own proceedings is almost inevitably limited. As we shall see in chapters 5 and 7, in the role of pastor or rescuer, professionals find it really challenging to contemplate forms of child participation that bring children into direct contact with information about their proceedings. As a consequence, professionals feel compelled to avoid situations where children might talk about their experiences in meetings let alone in Court. What this meant for the proceedings-experienced participants was that they experienced their rescuers as closing them down and actually, paradoxically, causing the harm from which
professionals were hoping to save them. These are issues to which I return in chapters 6 and 7.

Focusing on affective practices, allows me to examine this deeply affecting and affected terrain where it can be said proceedings only exist to manifest the compulsion or ‘urge to protect’ children from harm or the risk of harm. By examining how affect enables or limits expression, I can examine how affect legitimises certain practices over others and thus operates as an index of power, resulting in either an increased or decreased capacity to act. In other words, it becomes possible to question how power relations operate to position individuals as the observers/the observed, judges/the judged, protectors/the protected, present/absent, heard/silent and both the practical and affective consequences this has for them. It also becomes possible to question how individuals become amenable to institutional practice or intervention as well as how certain forms of behaviour or practice become appropriate and proscriptive. Finally, it becomes possible to question how difference in status or privilege and the ‘dividing practices,’ which underpin thinking about childhood and participation in the context of public law proceedings, influence how child participation is understood and practiced. In this sense, Wetherell’s interest in how affective practices shape what can be said and what cannot be said resonates with Foucault’s interest in discursive practices and how they are generated by the intersections of power/knowledge. Blending these two theoretical frameworks also enables me to foreground the entangled nature of affect in sense-making and the practices that are pursued or forsaken. In this sense I am demonstrating how affect is always already present in relational processes and meaning-making. It is not something that can be dismissed lightly or shirked off because it is so intimately integral to shaping decision-making.

The additional concepts of liminality and homeless affect are also important to my thesis as they provide the conceptual tools by which to examine how professionals and children become affectively suspended or trapped by the contradictions and tensions of the practice of child participation in an arena that is otherwise geared up to safeguard. As examined across chapters 5-7, these concepts are useful tools by which to focus on the paradoxes of speaking and silence, absence and presence, justice and protection, that I introduced in chapter 2. They also
help to shed light on why it is so very hard for professional practices to change, even when it might help children's experiences to become more meaningful, and even when there is a degree of consensus that these practices are not really working.
CHAPTER 4 - RESEARCH DESIGN AND DATA ANALYSIS

Introduction

This chapter describes my study design, considers the research context, introduces the participants and outlines how they were recruited. I then discuss the ethical considerations that dictated each step I took both in designing and conducting my research interviews, as well as informing how I dealt with the data I had collected. Finally, I introduce the methodological framework used in this study. I set out my reasons for analyzing my data by implementing discourse analysis as informed by the work of Potter & Wetherell (1987). Whilst I am primarily informed by that work, I also utilize a combination of analytic tools that derive from other sources such as interpretative repertoires (Wetherell & Potter, 1988), subject positions (Davies & Harre, 1990) and ideological dilemmas (Billig et al., 1988). I end with a description of how I analysed my data, using a discourse analytic approach.

4.1 Participant Recruitment

4.1.1 Proceedings-Experienced Participants

Whilst it was my aim to maintain as broad criteria as possible, I did limit my target group participants in the following ways:

a. Their public law proceedings must have concluded. After all, it is only once their proceedings are over that participants can talk about all the versions of child participation in which they were involved. I was also conscious that interviewing participants during their proceedings might influence how they then sought to participate in their proceedings, which was not the purpose of this research.

b. The proceedings in which they were involved must have been care/supervision order proceedings, secure accommodation proceedings, emergency protection order proceedings, or a mixture of these types of proceedings.
I was flexible with criteria around age given that children who have been subject to public law proceedings are a notoriously difficult group to access. This is because of the potential for concerned adults and gatekeepers to seek to oversee both who has access, and when, to participants (Todd, 2014). Carter (2009) suggests that researchers should therefore anticipate an over-cautious approach to research involving children as perceiving children as vulnerable, as I argue in chapter 2 is the case for children subject to public law proceedings, inevitably positions research as inherently risky, and the researcher as potentially dangerous. I also anticipated that my proceedings-experienced cohort would inevitably be a small pool of participants, given my awareness from professional practice about how seldom children participated, or attempted to participate, in more direct ways in their own proceedings. Thus, whilst I was in the hands of concerned adults as to whose participation in my research they might encourage, I was also interested to speak to proceedings-experienced participants who were now adults.

I used convenience sampling to recruit proceedings-experienced participants. I approached Children Panel Solicitors, Family Law Barristers and Social Care/Cafcass managers in my professional network by letter, to ask for their support in identifying children known to them in a professional capacity who might be interested in participating in my research. In the letter, I detailed the ideas I had about what constituted ‘child participation’ for the purpose of my research, which was intended to attract participants who had wanted to participate in their proceedings in ways that went beyond giving their ‘wishes and feelings’ to professionals as their proxy. This was because I was interested to understand their reasons for seeking to participate in an arena where I suspected they were not necessarily being encouraged, perhaps for good reason, to do so. To this letter I attached:

- A copy of the interview schedule (Appendix 1), so both any proceedings-experienced participants who wished to participate and the adults responsible for the welfare of those under the age of 18 were aware of what was going to be asked.
- Information Sheets and Consent Forms, for onward transmission to potential participants and for those under 18, their carers/gatekeepers also (see Appendices 3-4).
Decisions reached by gate-keepers can also be potentially crucial to the success of research projects. This is because their roles come in many guises: from convening their own ethics committees in order to scrutinise the ethical processes already completed by the researcher; to imposing conditions or restrictions in terms of time spent with participants, and/or insisting on the presence of observers; to making value judgments about which children might best benefit from such participation; to refusing access entirely (see Christensen and Prout 2002; Coyne et al, 2009).

Thus, whilst working closely with gatekeepers can, over time, help to build the mutually trusting relationship needed to alleviate some of these difficulties (Prout & Tisdall, 2006), Moore et al, (2017), suggest PhD researchers do not have those opportunities, even where an existing professional relationship (albeit in a different capacity) already exists. This might explain why, despite having prior ethics approval from the OU, my professional network and my subsequent general canvassing of Local Authority departments resulted in very little uptake. Indeed, all bar one Local Authority ignored or politely declined my requests.

That said, I was able to develop a good working relationship with the Youth Co-ordinator at this one Local Authority. Together, we re-worked my research design to accommodate his view that prospective participants had neither the time nor inclination to devote to the process I had envisaged. He recommended that we front-load the rapport building through my attendance at a series of in-care meetings. During those fortnightly sessions, I gave a short presentation and took some questions and joined in with other after school events where activities were laid on for their in-care teams. We also engaged in party game type pursuits and watched a theatre piece together, which was followed by a group discussion. There were several benefits that arose from this process, that I had not envisaged when I designed this research study. Firstly, the Local Authority could see I was flexible in how I approached this research and I could see that they were committed to supporting it. As a result, we built the mutually respectful relationship needed to support those for whom they were responsible to participate in this research. Secondly, it gave prospective participants the chance to meet and talk to me in a supportive but informal environment. They could also just watch me interact with others, if that is what they chose. Thirdly, it enabled me to significantly reduce the interview schedule so that
we could focus on their experiences of participation in their public law proceedings much more quickly. Fourthly, it meant that we already had some common ground and rapport before the interview began, which I believe helped to put these participants at ease.

By October 2019 seven individuals had come forward who met my criteria. Three of those participants were now adults who I interviewed at a venue of their choosing. The four other participants who came forward for interview, remained in the care of their Local Authority. I completed interviews with three of those school age participants after their school day, which meant they had limited time available. I interviewed another participant who remained in the care of her Local Authority during a free period afternoon.

A pen profile of each of the proceedings experienced participants I interviewed for the purposes of this research is set out in Table 1 below. Whilst there was racial diversity across my participants (three of my participants were Black or Asian minority ethnic), I note that they were also overwhelmingly female:
TABLE 1: Proceedings-Experienced Participants

<table>
<thead>
<tr>
<th>Pseudonym</th>
<th>Characteristics at the time of Interview</th>
<th>Characteristics at the time of public law proceedings</th>
<th>Synopsis of Supplemental Participation Experiences discussed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vicki</td>
<td>Early 20s. Living independently and working full-time in the NHS.</td>
<td>15 when removed with younger siblings, from whom she was subsequently separated.</td>
<td>Sought to speak with the Judge to have her say.</td>
</tr>
<tr>
<td>Hope</td>
<td>Mid 40s. Married with independent children. Works for a Local Authority.</td>
<td>15 when removed with younger siblings, from whom she was subsequently separated. Secure Accommodation proceedings whilst she was in care.</td>
<td>Sought to speak to the Judge. Wrote to the Judge.</td>
</tr>
<tr>
<td>Estelle</td>
<td>Mid 20s. Married with dependents.</td>
<td>15 when removed with younger siblings, from whom she was subsequently separated.</td>
<td>Participated in an ABE interview. Gave evidence in Court at final Hearing. Her mother and step-father, heard her evidence by video-link. She heard the Social Workers give evidence. Instructed her Solicitor directly as a Gillick competent child. Filed a statement.</td>
</tr>
<tr>
<td>Layla</td>
<td>15, living in foster care.</td>
<td>12 when removed. Whilst she lived with a family member for a short period after the proceedings, she returned herself to foster care, where she has remained since.</td>
<td>Attended a Judge’s Meeting with Children.</td>
</tr>
<tr>
<td>Kaya</td>
<td>15, living in foster care.</td>
<td>12 when removed against her wishes.</td>
<td>Sought to speak to the Judge. Participated in an ABE interview.</td>
</tr>
<tr>
<td>Name</td>
<td>Age, living in foster care</td>
<td>Age when removed against his wishes. His older brother was not removed.</td>
<td>Sought to speak to the Judge in his public law proceedings. Gave evidence as a prosecution witness in the Criminal Court with a jury, by video link at about the same time.</td>
</tr>
<tr>
<td>------</td>
<td>---------------------------</td>
<td>---------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Kemi</td>
<td>16, living in foster care</td>
<td>13 when removed against his wishes. His older brother was not removed.</td>
<td>Sought to speak to the Judge in his public law proceedings. Gave evidence as a prosecution witness in the Criminal Court with a jury, by video link at about the same time.</td>
</tr>
<tr>
<td>Cora</td>
<td>16, living in foster care</td>
<td>14 when removed with her younger brother with whom she continues to reside. She was removed against her wishes.</td>
<td>Sought to speak to the Judge. Wrote a letter to the Judge. Attended her own personal injury proceedings when she was much younger and spoke to the Judge at that time.</td>
</tr>
</tbody>
</table>

### 4.1.2 Professional Participants

I used purposive random sampling to identify and recruit Social Workers, Barristers and Solicitors, in accordance with the criteria identified by Kemper et al (2003). I adopted a broad cascading approach, by formally approaching management in the first instance, by letter to which I attached the following documents:

- Letter to potential professional participants to whom their managers wished to cascade
- Interview Schedule for Professional Participants (Appendix 2)
- Information and Consent Form (Appendix 5), and
- Request for Information: name, professional address, gender (if prepared to give) and professions since first vocational qualification.
By using a cascading approach, I built in a discretion for managers to make the final decisions as to whether they would support my research in principle and if so, how. Additionally, I limited the range of professionals I was seeking to participate to those who:

- Work as a specialist in public law proceedings for at least the past three years (later revised to include those who had worked for more than 15 years if they had retired or moved on to independent work)
- The work involves/involved them in public law proceedings either as a:
  1. Children Panel accredited Solicitor
  2. Barrister specialising in public law proceedings,
  3. Social Worker in a Looked After Child team or Court team

I recruited Social Workers and Barristers quite quickly. This perhaps reflects how relatively accustomed social work departments are now to being involved in research, as reflected by the wealth of literature that focuses on social work practice that informs chapters 1 and 2 of this thesis. I suspect accessing Barristers was also more straightforward, because they are self-employed and thus have more autonomy about whether they will participate in research or not. Interestingly, and reflecting the findings of other recent post-graduate experiences (Spacey, Harvey & Casey, 2020), I did encounter some difficulties recruiting Solicitors who proved quite elusive when it came to arranging a mutually convenient date for interview, by e-mail or telephone, despite their initial enthusiasm to do so. This could have been because of pressures on their time, or because of gate-keeping issues.

Accessing Guardian participants was much more complicated by virtue of the chain of institutional authority at Cafcass that generally seeks to gate-keep what is researched, how, when and by whom. Monahan & Fisher (2015) highlight the significant detrimental impact these gate-keeping processes have on research as they keep certain institutions relatively invisible and silent in terms of public scrutiny and accountability. Indeed, Monahan and Fisher (2015) suggest that in many cases, the refusal of certain professional institutions to engage with research leads researchers to change their research questions or give up research with those
groups of professionals altogether. I applied to Cafcass’ policy team to interview Guardians in February 2019. They refused my request in late December 2019. Nevertheless, I was still able to recruit and interview Children’s Guardians and Cafcass’ refusal to support this research has not become an additional obstacle in reaching my research aims. Quite fortuitously, two of the Guardians who were on standby to be interviewed, were not swayed by their employer’s decision and confirmed their interest to be interviewed. I was also able to recruit two former Guardians by relying on the broad cascading approaches I had initially used. This meant that I had to revise my original eligibility criteria, as set out at (a) above and review my Consent Form.

Those professionals who did kindly agree to participate in my research also provided some biographical information pertaining to their professional background contained in Table 2 in response to my request for information. Whilst there was diversity across levels of experience, I note that my professional participants were also overwhelmingly female:
<table>
<thead>
<tr>
<th>Pseudonym</th>
<th>Professional Background</th>
<th>Current Profession</th>
</tr>
</thead>
<tbody>
<tr>
<td>Donna</td>
<td>Social Worker, 20 years PQE, Independent Social Worker 3 years.</td>
<td>Independent Social Worker</td>
</tr>
<tr>
<td>Christine</td>
<td>Social Worker 15 years PQE. Previously an Education Welfare Officer.</td>
<td>Social Worker</td>
</tr>
<tr>
<td>Bobbi</td>
<td>Social Worker, 13 years PQE.</td>
<td>Social Worker</td>
</tr>
<tr>
<td>Kim</td>
<td>Social Worker 3 years PQE. Previously a midwife.</td>
<td>Social Worker</td>
</tr>
<tr>
<td>Charlotte</td>
<td>Social Worker, 5 years PQE. Previously a police officer.</td>
<td>Social Worker</td>
</tr>
<tr>
<td>Trudie</td>
<td>Family Law Barrister, over 20 years</td>
<td>Barrister</td>
</tr>
<tr>
<td>Angela</td>
<td>Family Law Barrister, over 30 years</td>
<td>Barrister</td>
</tr>
<tr>
<td>Scott</td>
<td>Family Law Barrister, 5 years. Previously a Solicitor and Children Panel member, 20 years PQE.</td>
<td>Barrister</td>
</tr>
<tr>
<td>Elizabeth</td>
<td>Family Law Barrister, nearly 30 years.</td>
<td>Barrister</td>
</tr>
<tr>
<td>Michael</td>
<td>Family Law Barrister, over 20 years.</td>
<td>Barrister</td>
</tr>
<tr>
<td>Ralph</td>
<td>Solicitor, over 20 years PQE. Children Panel member for 10 years.</td>
<td>Solicitor</td>
</tr>
<tr>
<td>Libby</td>
<td>Solicitor, over 20 years PQE. Children Panel member for over 15 years.</td>
<td>Solicitor</td>
</tr>
<tr>
<td>Emily</td>
<td>Solicitor, 10 years PQE. Children Panel member for over 5 years.</td>
<td>Solicitor</td>
</tr>
<tr>
<td>Kathryn</td>
<td>Solicitor, over 30 years PQE. Children Panel member since its inception.</td>
<td>Solicitor</td>
</tr>
<tr>
<td>Claudia</td>
<td>Solicitor, over 30 years PQE. Children Panel member since its inception.</td>
<td>Solicitor</td>
</tr>
<tr>
<td>Maggie</td>
<td>Children's Guardian, 10 years. Previously a Social Worker, 10 years PQE.</td>
<td>Children's Guardian</td>
</tr>
<tr>
<td>Jackie</td>
<td>Children's Guardian, 20 years. Independent Social Worker, 7 years. Previous professional experience as a Social Worker, 8 years PQE.</td>
<td>Independent Social Worker</td>
</tr>
<tr>
<td>Laura</td>
<td>Children's Guardian, nearly 25 years. Previously a Social Worker, 20 years PQE.</td>
<td>Retired Children's Guardian 1 year previously</td>
</tr>
</tbody>
</table>

55 PQE means post-qualification experience
4.2 Study Design and Data Collection

In this study I use textual data collected from a range of semi-structured interviews with professional participants and individuals who were formerly the subject of their own public law proceedings. The latter are the participants to whom I refer as ‘proceedings-experienced participants.’ In this section I set about providing an outline of how I went about collecting this data from the participants who shared their experiences with me.

4.2.1 Semi-Structured Interviews

I conducted semi-structured interviews with 7 proceedings-experienced participants who at the time of their proceedings, participated or sought to participate in them in ways that went beyond the representation offered by their proxy. Four of these participants remained subject to Care Orders at the time of our discussions and three were living independently as adults. At the time of interviewing these participants ranged between the ages of 15 - 45.

I also conducted semi-structured interviews with 19 professionals, who by virtue of their professional roles within public law proceedings, were or continued to be, brought into contact with those children who seek to participate in their own public law proceedings (5 Children Panel Solicitors, 5 Family Law Barristers, 5 Social Workers and 4 Children’s Guardians). Throughout this thesis I will refer to these participants as ‘professional participants.’

I selected semi-structured interviewing as an appropriate method by which to collect data because it provides a means to access and collect unique accounts, views and opinions from participants in ways that promote discussion around complex and challenging topics (Legard et al, 2003).
4.2.2 Pilot Study

Before organizing any interviews with my proceedings-experienced participants, I ran a pilot study. For the sake of convenience and efficiency, I conducted the pilot with a social care professional, and as a result of our discussions, I refined some of the questions on the interview schedule for proceedings-experienced participants. I was able to revise the schedule for those proceedings-experienced participants who remained subject to Care Orders further by virtue of the extensive rapport building I had done before meeting with them. The final schedules of questions are set out at Appendices 1a (under 18) and 1b (over 18). They consist of open questions enquiring about their involvement with their Social Worker, their Children’s Guardian and Solicitor and any other Court professional with whom they came into contact. I added some additional questions as prompt questions, if required. I specifically did not ask for details about why professionals and Courts had been involved in their lives although if participants chose to reveal these, I respectfully acknowledged their confidences.

The interview schedule for professionals was also trialed through a pilot study with both a social care and a legal professional, to ensure both the efficacy and applicability of the questions in relation to both social work and legal participants. It is replicated in Appendix 2 and consists of a number of open questions, which focus on information about professional experiences of child participation and concepts related to childhood, competence, child welfare and participation.

4.2.3 Conducting Semi-Structured Interviews

I shared the relevant interview schedule in advance with all participants so that they had the chance to acquaint themselves with its content beforehand. This was important because this provided opportunities to participants to delve more deeply into the meaning they might ascribe to ideas around child participation.

I conducted all interviews in person. The interviews lasted between 1 – 2.5 hours with professional participants and from between 20 minutes and 2 hours with proceedings-
experienced participants. I interviewed all participants in a venue of their choosing, to which I travelled, being keenly aware of the time constraints for all participants who had other activities and commitments to tend to as well.

I digitally recorded all the interviews with the participants’ advance knowledge and written approval. I left the recorder between us, on the floor or table, depending on the set up of our space, and made sure each participant knew that they could switch it off at any point, to either suspend or terminate the interview. Two proceedings-experienced participants did turn the recording off so that they could tell me a little more about their circumstances, before then switching it back on.

Save those who were supported via their Local Authority to participate, for whom I had no e-mail addresses, I provided all participants access to the interview transcripts and supported them to make any changes or amendments to the document, as they felt appropriate. This was primarily a concern for professional participants who were understandably anxious to preserve the confidentiality of their cases by anonymising quite widely, for example, the Court venue or Judge’s name.

No participant was paid for participating. I did feel it was appropriate however to acknowledge the time that was given by the proceedings-experienced participants who remained in care, whose benefits in participating in this study were wholly indirect (Bushin, 2007). Immediately following our interviews, I provided each of them with a £20 amazon gift voucher. I also offered to provide refreshments to all professional and adult proceedings-experienced participants, which were intended as small but important gestures of appreciation.

4.3 Ethical Considerations

I formally received approval for this research from the OU’s Human Resources Ethics Committee before conducting any interviews, including those I undertook in the pilot study. That said, conscientious and vigilant attention to ethical considerations remained important throughout the research process (Bryman, 2008) from ensuring the voluntary nature of
participants’ involvement to analysing and presenting the research (Robson, 2002). This was especially important given the need to balance the children’s right to have a voice in research - a recent but increasingly common phenomenon in a world where the relational quality of childhood is now recognized (O’Reilly & Dogra, 2018), - against children’s right to be protected from the potential for harm or distress. This brings with it a whole host of ethical dilemmas similar to those pervading research with other disadvantaged and thus less powerful groups (Hood, Mayall and Oliver, 1999). Echoing the claim that ‘the core idea of participatory research is that the enquirer will not further marginalize or disempower the study participants’ (Creswell, 2007: 63) is the cautionary reminder that children, in particular, remain subordinate to and controlled by adults.

In the remainder of this section, I explore the ethical considerations pertinent to those processes with these opening observations in mind.

4.3.1 Informed Consent

I provided every participant with an Information Sheet and Consent Form, written in language that addressed its target audience, and which provided opportunities both in advance of our meeting and again at the beginning of the interview to ask questions. I did this because it was extremely important to me that all my participants knew the purpose of my research and what would happen with their data. Transparency was vital. It was also important that all those proceedings-experienced participants who were under 18 gave informed consent alongside their legal guardian rather than assent (Richards et al, 2015). This is because there seemed to be little reason to differentiate between the status of consent between participants, where everyone had had access to full information and where for those younger participants, a person holding parental responsibility had also consented (Richards et al, 2015). No participant chose to have any support from another person during their interviews with me although again, I reassured younger participants that if they wanted to speak to a trusted other, they should stop the interview to do so. In the absence of any other support, however, I remained ethically mindful by reviewing whether their decision to participate remained genuine at every stage (Etherington, 2007).
At the beginning of every interview, I reminded each participant of their right to stop the interview at any point and withdraw their consent to the use of the data produced as a result of our discussions. I also reminded all participants that although I hoped they would not, they could withdraw their consent right up to the point where my analysis began in earnest, should they choose to do so. In those circumstances, which in fact did not arise, any and all data I held for that participant would be destroyed. All participants have been able to contact me by e-mail and by mobile telephone throughout this process in order to raise concerns or interest about their involvement. Many of the participants have responded to my subsequent communications in which I sent out a copy of their interview transcript, either by seeking amendments or by approving its content. To that extent, their ongoing consent could be implied.

Throughout the interviews, I remained alert to the emotional needs of all my participants, making sure they were offered regular breaks, that they were comfortable with the issues we were discussing and that they were not becoming distressed or feeling under pressure to give answers when they would rather not, in an attempt to please me (Phelan and Kinsella, 2013). Further, whilst I made the decision not to invite any discussion about the circumstances that brought children into public law proceedings, when those discussions did take place, they seemed to develop in ways that were not harmful or distressing but cathartic and beneficial to their attempts to make sense of their experiences (Allmark et al, 2009). As such, my training and experience in interviewing children in such contexts, notably from my years working as a Children Panel Solicitor, helped us work through those situations as and when they arose. This is not an uncommon experience and one encountered often when sensitive issues might arise during research interviews (Bessell, 2008; Coles and Mudaly, 2010).
4.3.2 Confidentiality and Anonymity

I have anonymised all written documentation about all my participants and have not referenced the names or personal circumstances of my participants in discussions with my Supervisors either. Any and all geographical and personal details that are not directly relevant to their participation experiences have also been removed from their transcripts. I have provided all my participants with pseudonyms and give only generalized information about their circumstances here. I identify proceedings-experienced participants only by their age range at the time of our interview, their most general of domestic circumstances and the forms of participation about which they spoke in addition to giving ‘wishes and feelings’. I differentiate professionals by the range of experience they self-reported.

All data relating to each participant has been securely maintained. All audio files and transcripts of interviews have been maintained at all times on a password-protected folder on the Open University’s network, which only I can access. The computers I use to access those files are also password protected. The draft transcripts were sent to participants to approve using the secure on line file transfer system, Zendto. I hold all completed consent forms separately to any anonymised hard copy documents, in different locked filing cabinets.

4.3.3 The Problem of Familiarity: Researching my own Professional Field

Even though there are some distinct benefits to re-immersing yourself in a context with which you believe you are familiar, for example, that I was an audience to whom participants could relate as someone who both understood their ‘language’ and had some insight into their experiences, there are also disadvantages. One clear risk for me was the potential for collusion with participants that Morris (2015) highlighted can arise when researchers assume participants share similar experiences with them because they inhabit a familiar professional territory. This meant I needed to be extra vigilant both during interviews with professionals and indeed in analysis that I was sticking closely to what participants said rather than assuming what they said or indeed inferring what they meant to say. Similarly pertinent, when talking with proceedings-experienced participants I remained aware that they could see me in my previous
professional role as someone they might have encountered as part of their legal team and potentially associate with those challenging experiences.

Elliott et al (1999) stress the importance of researchers being aware of the values, experiences and assumptions they bring to the research process themselves. Indeed, as discussed in chapter 1, it was the experiences and pertinently, the professional dilemmas I faced and saw others face in reconciling the participation of children in their otherwise protection-focused public law proceedings that my interest in this research was borne and galvanized. Separating the role of legal professional from the role of researcher has therefore not been an easy one for me. It is an issue I have indulged during supervision on several occasions and reflected on keenly during the analysis process. Keeping a reflective journal has been invaluable, as this has allowed me to trace and reflect on how my own beliefs and assumptions might be impacting on the data. It has also allowed me to track how I have tackled the longer-term process of making my research context ‘strange’ to myself. Had I not been able to achieve this, it would have made the process of critical analysis nigh on impossible.

Having read back through that journal I can see how heavily invested I was at the beginning of the analysis process in the actual cases and practice issues professionals discussed in interview. On those occasions I found it more difficult to analyse the data as I was pre-occupied by moments in the participants’ accounts where I felt things could have been done differently. There were other occasions where I found myself emotionally invested in the very open and candid accounts participants gave, usually in the first minutes of interview, of the incidents of child participation that continued to professionally or personally confound and affect them. In such situations I found my initial reactions to be to empathise as a fellow professional about the situation when what is required from me as a researcher is to focus on what was being achieved with the talk. I found myself in a similar situation with the proceedings-experienced participants, especially when I was analyzing those parts of the transcripts where they spoke about their participatory experiences with palpable distress and anger. Whilst I had offered those participants the chance to re-compose themselves, if they chose, during our interviews, I now
found myself on occasions giving myself space from the data so that I could return to it later and re-engage analytically with their stories.

4.4 Discourse Analysis

The methodological perspective I use in my research is discourse analysis. As Foucault, Wetherell and others demonstrate through their academic writing and research, the constitution of the subject, social practices and affective practices take place — and indeed are challenged - at the discursive level. Importantly then, an important route to understanding identity and the practices that pepper our interactions is by paying attention to talk. The data I have collected is all talk. My data are the transcripts of interviews co-produced by me as the researcher with each of my participants during which we talked about their experiences, interactions and understandings of childhood and child participation as pertaining to public law proceedings.

Whilst a number of approaches have emerged within psychology, which might be used to analyse the issues I have outlined above and which focus on discourse, the version of discourse analysis, that I argue provides the most appropriate method to analyse the data I have collected is one that draws on Potter & Wetherell’s (1987) framework. They contend that people ‘use their language to do things’ (ibid; 32, original emphasis) and that people use language ‘to construct versions of the social world’ (ibid; 33, original emphasis). I approach discourse analysis therefore as a method by which to interrogate the lively nature of people's accounts and the worlds they construct (Potter & Wetherell, 1987). Thus, I seek to integrate a finer grained discourse analysis with a broader post-structuralist emphasis through a combination of analytic tools such as interpretative repertoires (Wetherell & Potter, 1988), subject positions (Davies & Harre, 1990), ideological dilemmas (Billig et al, 1988) and affective practice (Wetherell, 2012).

In that regard, and following Potter & Wetherell, (1987) I define interpretative repertoires, which in my analysis chapters I use interchangeably with ‘discourse,’ as the building blocks that constitute sense-making across a range of social practices: in their affective states,
experiences and evaluations of behaviour. I am concerned therefore not simply in what actually happened but how these accounts are constructed to justify a position, attribute or apportion blame, make or rebut accusations and make excuses, for instance. Interpretative repertoires are thus important devices that, over time, cohere patterns of speaking into readily discernable assumptions, metaphors, figures of speech, and tropes. They can also be fragmented and reveal distinct but inconsistent ways of thinking and behaving and thus emphasise individual agency and flexibility through social interaction: ‘people are, at the same time, both the products and the producers of discourse’ (Edley, 2001: 190). To that extent, they are distinguishable from Foucauldian discourse analytic approaches where typically, communities and institutions are organised around and subjected to hegemonic discourses that determine the fixed ways of speaking which are ‘out there’ in society (Edley, 2001). Interpretative repertoires are therefore a useful and important tool, which can aid the identification of inconsistencies and variability in talk about childhood and child participation.

To speak at all is to speak from a position (Davies & Harre, 1990). In my research, identifying these subject positions is important in terms of understanding how child participation is negotiated, resisted or re-negotiated. It is the subject positions that make those interpretative repertoires possible. Thinking in terms of subject positions affords opportunities to elicit the possibilities and restrictions around which individuals understand themselves, and create certain identities (Potter & Wetherell, 1987), including the congenial affective positions they take up.

Importantly, by taking up contradictory beliefs and action, often simultaneously, even across the same episode of talk, creates dilemmas, (which I use co-terminously with ‘contradictions’ or ‘tensions’) across everyday thinking (Billig et al, 1988). Far from being disingenuous or hypocritical practices, they involve individuals navigating contradictory but idealistic worlds to resolve in choices. As such, dilemmatic themes are embedded in ‘common sense … within layers of meaning of language … which provide[s] the possibility of argument and deliberation’ (p19). They are constructed rhetorically, where in a discursively push and pull way, individuals work through competing ways of talking about an event or an object to reach the compromises, which coalesce into affective-discursive configurations. Identifying these actual dilemmas,
tensions or contradictions is therefore important because it aids understanding about how the actual practice of child participation involves difficult ideological choices and compromises. As I will demonstrate in chapters 5-7, the potential for dilemmas, tensions and inconsistencies to arise in arenas such as public law proceedings is considerable where there are often ongoing struggles in consensus between terms such as ‘best interests,’ ‘competence’ and ‘childhood’, for instance.

4.5 Conducting my Discourse Analysis

By the completion of my interview fieldwork I had collected twenty-six different sets of data: recordings of interviews with 7 proceedings-experienced participants, 5 Social Workers, 4 Children’s Guardians, 5 Children Panel Solicitors, and 5 Family Law Barristers.

Before any analysis began, I listened to each of the recordings several times to ensure familiarity. Given the potential importance of the process of transcription to the interpretation of the data in itself (Duranti, 2006), I also transcribed all the recordings myself. Key to this process is the task of making decisions about how to transcribe, capture and represent intonations, hesitations, laughter or other non-verbal communication and silences (Denzin & Lincoln, 2005). For that reason I set out in tabulated form below how I captured those instances that accompanied the talk of my participants.
Table 3: Features I noted in Participants’ Talk

<table>
<thead>
<tr>
<th>Instance captured</th>
<th>Feature</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hesitation under a second</td>
<td>...</td>
</tr>
<tr>
<td>Pause of X seconds</td>
<td>(X seconds)</td>
</tr>
<tr>
<td>Laughter, sigh or physical action</td>
<td>(laughing) (sighs) (physical action)</td>
</tr>
<tr>
<td>Speaking more loudly</td>
<td><strong>Speaking more loudly for emphasis</strong></td>
</tr>
</tbody>
</table>

Following a period of reading and re-reading the transcripts I had produced and returning when I felt it was important to the audio recordings, I was able to trace the meaning-making patterns around childhood, welfare and child participation and identify the dominant discourses implicitly driving them. I plotted these ideas across a number of A3 size charts, which helped me to identify and organize the underlying discourses and their consequences. I was also able to identify the limitations that exist around speaking about those subjects and how participants positioned themselves and others in relation to them. As a result, I was able to examine what appeared discursively possible and, by implication, what was not.

Given the level of interpretation being done by me here, means that I had to be very vigilant that I was remaining close to the data and developing the constructions of these topics in accordance with the meanings discussed by the participants, and not meanings ascribed by me.

4.6 Conclusions

Potter & Wetherell (1987) state that talk does not exist merely in a purely ‘conceptual realm’ but is a ‘medium for action’ (p9). In other words, talk serves a purpose. The purpose of the talk generated in my research interviews was to make sense of the tensions, consequences and affect of child participation in public law proceedings that make it so paradoxical.
The discourse analytic approach I adopted serves to bridge the exploration of my participants’ views about childhood and child participation in interview with the subsequent analysis and interpretation of the data that I then undertook. This is important, as it has allowed me to respond to my research questions by foregrounding the views of my participants as fully as is ever possible in a research scenario where I co-produce the talk and then interpret it. The aim of my first research question is to investigate the ways in which professionals construct childhood, child participation and their role in effecting it in practice. These ideas form the basis of my analysis in chapter 5. In chapter 6, and in order to respond to research question 2, I focus my analysis on how my proceedings-experienced participants framed notions of childhood, child participation and its performance, highlighting the challenges this raised for them in achieving meaningful child participation at all. In the final analysis chapter 7, I explore what professional and proceedings-experienced participants’ expressions of affect tell us about their experiences of child participation. In so doing, my aim is to respond to research questions 3 and 4.

I present my analysis across these next three chapters.
CHAPTER 5 - THE DISCOURSES OF CHILDHOOD AND CHILD PARTICIPATION DRAWN ON BY PROFESSIONAL PARTICIPANTS

Introduction

In this first analytic chapter, I explore the discursive practices of my professional participants. These are the participants whose practices are implicitly and explicitly informed and produced by those hegemonic social, cultural and institutional ideas, as mediated by the welfare-through-protection discourse. I am doing this in two ways. Firstly, I examine the discourses professionals recruited, mobilized or resisted to construct and make sense of the concepts of childhood and child participation that justified and maintained their professional practices. Secondly, I highlight how any dilemmas, contradictions or paradoxes that arose within that talk were resolved or not, and at what cost. These aims are the key focus of my first research question:

1. How and to what effect do professionals construct ‘childhood’ and ‘child participation’ in public law proceedings?

I have organised this chapter into two separate but intersecting parts where I examine the discourses that inform the practices of professional participants in relation to ‘childhood’ (section 1) and ‘child participation’ (section 2). Following each section of analysis I provide a discussion of my findings.

5.1 Constructions of Childhood: The Professional Participants

I present three distinctive but often overlapping discourses that I found professionals recruited to make sense of childhood in public law proceedings, which are the ‘Essential Child,’ the ‘Care Proceedings Child’ and the ‘Ambiguity of Childhood.’ The versions of childhood produced by
these discourses reflect the finding I have highlighted in the academic literature generally in that they operate as barriers rather than facilitators to children’s participation and are thus paradoxical.

5.1.1 The Essential Child

The discourse of the ‘Essential Child’ encapsulates those repertoires or core bodies of knowledge, acquired from the more traditional ways of thinking about childhood, that foreground the passivity of childhood and serve to distinguish it from adulthood (Burman, 2017; Lee, 2001). These are the ideas I discussed in chapter 1, which have entered professional discourse and been refined or distilled in accordance with principles established in specialisms such as psychology and medicine to create the notion of the proper, real or normal child (Burman, 2017; O’Dell et al, 2018). As I demonstrated in chapter 2, these are highly influential ideas about childhood that drive the compulsion to protect by fixing childhood as a period of dependence, innocence and vulnerability. Understood this way, the ‘Essential Child,’ serves as the yardstick against which some children are singled out and targeted for a version of protection that legitimates and shapes welfare-through-protection practices. Crucially, however, these practices produce a version of protection that appears incommensurable with thinking about children as competent or agentic actors as is usually inferred in meaningful versions of participation, and thus frequently implies the mandate for stifling children’s participation. The paradox here is that children who need protection are too vulnerable to be able to participate in ways that, as we will see in chapter 6, are perceived as meaningful and beneficial to them.

This first extract comes from my interview with Charlotte, who is a social worker. Her response quintessentially captures the discourse of the ‘Essential Child’ by listing a number of powerful ideas that all professional participants mobilized when they were asked to describe ‘childhood’ in interview. She begins with those ideas that directly inform her professional practice before broadening her reflections to ideas that although socially prolific are perhaps less easy to legitimate professionally. Charlotte is careful to differentiate these ideas between those that emanate from the brain and those, that by implication, are driven by the heart:
**Extract 1: Charlotte**

1. I think… my brain goes into the sort of… the kind of… er,… the factual idea of it
2. being this period between 0 and 18 years, er ,… my brain goes to, you know,
3. thinking about psychology and developmental stages and the idea that different
4. children do different things at different times but then there’s that kind of idealized
5. thing that this child should be in this perfect, safe place where children don’t have
6. to worry about adult concerns and are protected,… and… of course, we come into
7. the picture when that little idyll is not being fulfilled (2 seconds). I guess these ideas
8. about innocence and needing to be protected comes from all over the shop… fairy
9. stories, t.v. and,… you know,… as parents,… what you want for your children and
10. that general recoiling experience you have when you read about what’s happened
11. to a child and you think ‘that should never have happened to them’ and with
12. innocence, that children can never have done anything to deserve or provoke
13. those kinds of things happening to them (3 seconds). I think it goes an awfully long
14. way back, doesn’t it?

The image of the brain operating as if the speaker were not in charge of it (‘my brain goes to,’ lines 1 and 2) immediately calls attention to the power of certain ideas about childhood. These ideas spring to her mind almost without conscious effort. Given the professional position from which she was speaking, it is perhaps unsurprising that her talk was initially organised around developmentally based age and stage repertoires (lines 1 – 4), which as discussed in chapter 2, are deeply embedded, as expert knowledge, in welfare-related practices. These are types of knowledge that Foucault would relate to as forms of biopower, (Foucault, 1972) that mandate practices where professionals are entitled to draw on universal ideas from child development to inform their welfare assessments. Thus, by implicitly elevating these forms of knowledge to something incontrovertible or ‘factual’ (line 1) Charlotte reminds us that she is drawing on these ideas as ‘proof’ about childhood.
In comparison, presenting repertoires of childhood innocence, vulnerability and dependence (lines 5 – 7) as ‘that kind of idealised thing’ (lines 4-5) perhaps hints at the mythical or aspirational quality of those ideas and that whilst they come ‘from all over the shop… fairy stories, t.v. and, … you know… as parents’ (lines 8-9), they really have not earned their place as ‘factual’ knowledge in professional assessment processes. They are those deeply culturally engrained taken-for-granted ideas that require no explanation (and as such, difficult to reflect upon, challenge, verify or importantly, ignore). As Charlotte herself observes, these are also the repertoires that viscerally mobilise that compulsion to protect, so as to keep children in ‘this perfect, safe place where children don’t have to worry about adult concerns’ (lines 5-6). Interestingly, these are not repertoires that her ‘brain goes to’ but, by implication, those she holds in her heart. They are those repertoires that are more intuitive, instinctive or heartfelt. Moreover, the suggestion that this is what everyone wants for their children (line 9) points to the axiomatic and indeed naturalised status of the urge or ‘need[ing] to protect’ (line 8). As Charlotte observes, when transgressed, these powerful images of childhood carry important consequences as they evoke strong personal and social responses (‘that general recoiling experience,’ line 10 and ‘as parents, […] ‘that should never happen to them’ […] children can never have done anything to deserve or provoke those kinds of things,’ lines 12 – 13).

The observation that these influences go ‘an awfully long way back’ (line 14), speaks to the powerful operation of repertoires of protection, conflating the personal/heart with the professional/head and the historical with the here and now, to produce practices where ‘we come into the picture when that little idyll is not being fulfilled’ (lines 6-7). As such, Charlotte is hinting at how much is potentially put at stake by questioning that ‘recoiling experience’ (line 10) these ideas produce, even when there might legitimate reasons to do so. This is because these ideas have not earned the status of ‘factual’ but operate as if they were. That is the paradox. As I discuss in more detail in chapter 7, whilst Charlotte experiences lingering discomfort about the legitimacy of these ideas in her professional practice, it is unlikely she would explicitly question them given they are so embedded in her practice. Ultimately, she attempts to move beyond the paradox by rhetorically seeking approbation for trusting in the power of these ideas to do good, simply because they are so deeply entrenched and widely
acknowledged and moreover, I suspect, because they are those ideas upon which social work practice is so firmly predicated: ‘I think it goes an awfully long way back, doesn’t it?’ (lines 13-14).

In this next extract, Emily, a Solicitor, focuses on a version of participation that was frequently perceived as troubling for professional participants in this study, which was young children participating as witnesses. Interestingly, by choosing to speak about young children giving evidence, Emily is forced to confront the plausibility or reliability of those powerful and axiomatic theories about childhood that construct younger children as lacking competence and thus make it so difficult to imagine children giving evidence in practice. Emily’s uncertainty arises when she compares the application of ‘age and stage’ approaches in her professional work with insights that she gains from her personal experiences that contradict those:

Extract 2: Emily

1. We assume that a 5-year-old wouldn’t be able to articulate (2 seconds). When
2. actually, (2 seconds) I’ve got a 3-year-old who could tell me completely what he
3. wants (laughing)!! So, it’s funny that as a lawyer I would be thinking ‘oh, a 5-year-
4. old wouldn’t be able to have any level of understanding’ whereas as a mother, I
5. know my 3-year-old can tell me exactly what he wants… and what he doesn’t
6. want!… so,… I’ve never… I’ve literally never thought of it like that.

Recruiting the collective authority of her colleagues (‘we,’ line 1) is a rhetorical device we will see frequently drawn on by a number of my participants throughout my analysis chapters. Here it is used to legitimize her claim, by implicitly drawing on the discourse of the ‘Essential Child,’ that a child of 5 is not ‘able to articulate’ (line 1), or understand (line 4). Her faltering ‘when actually (2 seconds)’ (line 2) is important because it indicates a shift in discursive focus. It could be argued that in those seconds before she speaks again Emily was reflecting on how wedded she and her colleagues are to the discourse of the ‘Essential Child’ that it simply fixes what lawyers are expected to know or say. Indeed, it is likely to be a real revelation that the power
of the dominant discourse of the ‘Essential Child’ has meant that she had not thought to bring her personal and professional worlds together (‘I’ve literally never thought of it like that,’ line 6). Alternatively, it could be that she was reflecting on whether she wanted to venture an alternative position at all, given it would undermine what she said before. Whatever her motivation, when she does speak, she presents a contradictory and altogether more uncertain idea about childhood; that her young child ‘could tell me completely what he wants’ (line 2). Positioned ‘as a mother’ (line 4), what she says about ‘age and stage’ forces her to attend to the problem of how to carry on professionally.

Thinking about childhood in ways that contradict the ‘Essential Child’ discourse is likely to be difficult for her, however. Perhaps it is those thoughts that bring her to laugh it away (line 3). Thus, whilst she is baffled by the revelation that her personal experiences contradict her professional ones, she cannot confront the paradox as that would mean having to choose one form of knowledge over the other. Her decision to move on suggests that the only way out of this discomfort professionally is to gloss over the paradox. Thus, overlooking the knowledge she has about childhood as a mother allows her to maintain her status as a competent professional as it allows her to reproduce those age-related repertoires that underpin the discourse of the ‘Essential Child,’ even when it is questionable as to whether it is necessarily reliable.

In contrast to Emily, this next extract from another Solicitor, Kathryn, illustrates how the ‘Essential Child’ discourse problematically informs her responses to routine encounters. Seeing someone running down the street or shouting, or spending time with her relatives causes her to cringe because they make her think about the experiences of children she encounters professionally. These insights were shared with me in response to the same question I had asked Emily (and all professional participants) about whether she would be comfortable with children of different ages participating in their own proceedings by instructing their own Solicitor, being a witness, seeing the Judge or seeing evidence:

**Extract 3: Kathryn**
Kathryn: If I see someone running in the street or shouting at the children, I cringe (2 seconds) and go ‘oh, don't do that,’ … even with one of my family members … when I see one of my relatives shouting at their child I immediately say ‘don't do that,’ … yeah (2 seconds). I think of the children going to school without breakfast and stuff. I think it's this work …

Sara: Why do you cringe?

Kathryn: Because I think there's a better way of doing it. 'Don't shout, just put your view across!' … I know we can't help raising our voices at times […] but again,… it’s the protection (3 seconds). Yeah,… protection (3 seconds). I've been doing this job too long! (laughs)

Kathryn's talk suggests that the 'Essential Child' has taken such a grip that she is no longer able to control her response to everyday situations: ‘I cringe’ (lines 1-2). That her private encounters have become so imbued with her professional experiences, witnessing innocuous events like 'someone running in the street,' (line 1) or indeed 'one of my relatives shouting at their child,' (lines 3-4) is enough to transmute her thoughts about harmless events to thinking about 'the children going to school without breakfast and stuff,' (line 5). At the very least, she seems to recognise that the ideas around protection that frame her working life, now also frame her reactions to adult-child relationships outside of those boundaries. Indeed, it could be argued that declarations such as ‘there's a better way of doing it’, (line 8) betray how powerfully evocative the 'Essential Child' is and that she has become a product of what Foucault would recognize, as the operation of pastoral power, as discussed in more detail in chapter 3. This is something that Kathryn seems to recognise here for herself as, following her very lengthy pauses, she continues by seeming to poke fun at her own dilemma: ‘It’s the protection… I've been doing this job too long! (laughs)’ (line 11). There is a sense that not all is well, however, (‘Yeah, protection (3 seconds),’ line 10). Perhaps lingering over ‘protection’ suggests the 'Essential Child' construct does not fit neatly with her life after all.

Discussion
The construct of the ‘Essential Child’ acts as professional shorthand for the proper, or real, child. In other words, the ‘Essential Child’ discourse reflects what Foucault would perceive as illustrative of disciplinary power acting against these professionals who ascribe to very similar judgements about what constitutes a good childhood. Indeed, the power of its professional commonality is inherently demonstrated by how the characteristics of the ‘Essential Child’ were not always made explicit by my professional participants.

What also becomes apparent is how those essential characteristics largely reflect the qualities of childhood associated with the ‘universal child,’ ‘innocent child’ and ‘vulnerable child’ discussed in chapter 1. In that regard each of these three extracts also highlights the difficulties these constructions of childhood create for those relying on them, (also as highlighted in chapter 1). These manifest through the paradoxes professionals wrestled when confronted with their own construct of the ‘Essential Child.’ Often this arose quite consciously and was made visible when the talk about the ‘Essential Child’ faltered or collapsed in the face of conflicting experiences or ideas. Perhaps out of necessity, those personal and experiential parts of the talk were glossed over, dismissed or subordinated in favour of those parts that enabled them to carry on with their professional practice. In that sense, being stuck with the ‘Essential Child’ was presented as, and potentially even felt to be, a seemingly inevitable if not wholly reliable source of professional practice.

An important paradox is that in the context of public law proceedings, this construction of childhood served to remind professionals how the children with whom they work are not ‘Essential Children.’ In that regard, the ‘Essential Child’ operates as a tool for ‘othering,’ rather than ‘including’ children subject to public law proceedings. Thus, through the discourse of the ‘Essential Child,’ professionals were able to mandate those children with extra deficits as in need of professional intervention. As a professional discourse that predominated, it also acted as a gauge by which professionals constructed types of ‘othered’ childhood such as the ‘Care Proceedings Child,’ and the ‘Ambiguity of Childhood,’ to which I turn below.

5.1.2 The Care Proceedings Child
The discourse of the ‘Care Proceedings Child’ encapsulates the repertoires of ultra-protection and ultra-vulnerability that produce a heightened compulsion in professionals to over-protect children whose life experiences position them as living beyond or on the margins of normal childhood. In that sense, it is a discourse that is based on the discourse of the ‘Essential Child,’ but goes beyond it. Thus, when my professional participants foregrounded children’s impoverished personal background and experiences, they positioned children beyond the more familiar tropes associated with essential childhoods in ways that distinguished them as doubly deficient. As ‘Care Proceedings Children’ they are not simply constructed as deficient because of their status as children. They are constructed as doubly deficient because of their status as the most vulnerable children. As a result, professionals perceived anything potentially contra-indicative to their idea of welfare-through-protection as completely unthinkable.

In turn, implicitly drawing on the construct of the ‘Care Proceedings Child’ enabled professionals to frame themselves as super-protectors and their practice as super-protective, justifying in the process the levels of monitoring and intervention that were deemed necessary to protect these children. A consequence of these practices was that they undermined or removed entirely, in ways perceived as justifiable, those aspects of practice that might have promoted meaningful versions of participation.

In the following extract, Maggie, a Children’s Guardian, is responding to my question about how her ideas about childhood might impact on the child’s ability to participate in their own proceedings. Offering a description of what she calls ‘care children’ as ultra-vulnerable, she explains how thinking about their experiences compels the intense urge to practice protection to the point where these children end up not being able to talk about what they have been through. Paradoxically, she notes that restricting their ability to talk may actually not be protective and actually cause them more harm. Simply put, children cannot participate because they have to have ultra-protection:

**Extract 4: Maggie**

1. *I think we think of care children as being ultra-vulnerable in need of*
ultra-protection. That's what it comes down to. You know what they've been through (3 seconds). They are the lower part of the population [...] Yeah, and because they've been through so much, (2 seconds) we feel... it's like we have to protect them so much more, ... trying to protect them so much... (2 seconds) and in protecting them causing them more harm because they can't explain what they've been through (2 seconds). So, perhaps we do protect them a bit too much? And you do look at them differently and you do think when you read the neglect 'where are they gonna go to now?'

Once again, by speaking for all ('we all think,' line 1) Maggie makes explicit the assumption in professional discourse about the commonality of the construction of 'care children' (line 1). Indeed, specifically referencing this cohort of children as one that 'you do look at [...] differently' (line 8) draws attention to them as standing apart from the normal bounds of childhood. Implicit in the discourse of the 'Care Proceedings Child' is how their difference to other children becomes what they have in common. Thus, the 'Care Proceedings Child' is framed and distinguished by their experiences ('you know what they've been through [...] they've been through so much', lines 2-3 and 4), as 'ultra-vulnerable,' (line 1) and needing 'ultra-protection,' (line 2). Turning up the focus on children's innate vulnerability and need for dependence mark important shifts in professional talk as they serve to perpetuate and moreover reinforce existing power relations and the exclusionary practices they yield (Foucault 1972, Kitzinger, 2015). Here, these repertoires are recruited to validate the decisions of professionals to exclude children from some forms of participation because speaking about their experiences is perceived as harmful as implied by Maggie's declaration that professionals 'have to protect them so much more' (line 5). The immediate shift in language to 'trying to protect them so much' (line 5) is important in this regard because it suggests that the job of having to protect children is incessant. Professionals have to keep trying, and in that state of continual trying, to identify and alleviate the potential for any emerging risks to do harm. This speaks to the influence of pastoral power over some professionals where even when children speaking might be beneficial to them (lines 5-6), it remains so deeply antithetical that it very quickly needs to be glossed over ('when you read the neglect, where they gonna go now?' lines 8-9).
As we saw in chapter 2, framing children as needing ‘special protection’ (Qvortrup, 2005) can in and of itself justify over-protective practice. However, it potentially serves to cause children to lose other freedoms. Here, the consequences for the ‘Care Proceedings Child’ are doubly onerous as singling them out as needing special protection also prevents them from speaking about the experiences at the heart of why they need this. Read this way, the pauses in her speech are likely linked to the paradox Maggie seems keen to avoid that by being unable to help but protect care children, means being unable to help them explain their experiences (line 6-7), while at the same time acknowledging that ‘too much’ (lines 7-8) protection might cause harm. By the end of this extract, Maggie has effectively talked participation out of existence as she returns to linger on the necessity of protection implying that sacrificing the child’s participation is, it seems, as a small price to pay to rescue them from the terrible things they have experienced.

What this final extract in this section highlights, is how the ‘Care Proceedings Child’ is mobilized, to explicitly problematize the participation children who have been deemed Gillick competent, and are thus officially cleared for certain types of participation that are unavailable to others. As discussed in chapter 2, the Gillick competent child is one deemed to have sufficiently demonstrated their ability to instruct their Solicitor directly instead of their Guardian fulfilling that role by proxy. Here, another Solicitor, Claudia, is responding to my question about whether children of differing ages can benefit from participation, where they instruct their Solicitor, meet the Judge, give or see evidence in their own proceedings. She uses an illustration of a hypothetical Gillick competent child to demonstrate the complex nature of representing a child, who she describes as deeply damaged, instructing her to run her case to return home to what her Solicitor deems as too harmful an environment:

Extract 5: Claudia

1  We are seeing children, particularly in section 31 proceedings⁵⁶, who are so, erm, shall I use the words ‘emotionally damaged’?…. They have got so much
emotional baggage with them but of course the primary thing they want is ‘I
want to go home. I can protect myself’ you know? ‘I know what this is all about
and I know why I’m in foster care but I want to go home’, … now,… do you put
that forward? That’s the child’s Instructions… and… do you just put that
forward? [4 seconds. Claudia shrugs and picks up and reads the Interview
Schedule] …it’s become much more complex and children’s lives have become
more complex as well as the awful emotional damage they have experienced
[…] the years that sometimes children are left in …the neglect that these children
experience. So, I think their lives have become much more complex.

In common with Maggie, Claudia makes the assumption that the children ‘we are seeing’, (line 1) in care proceedings (‘section 31 proceedings’ (line 1) are children whose characteristics are familiar to all professionals working within that environment. Rooted in this professional discourse, the emphasis given to the complexity of these children’s lives from the ‘the years that sometimes children are left in… the neglect these children experience’ (line 10), which inevitably compels the heightened urge to protect, becomes difficult to resist. This is perhaps more so, when extreme case formulations (Pomerantz, 1986) are used, as they are here, to reinforce the gravity of situations professionals face. The powerful image constructed around children’s ‘awful emotional damage’ (line 9) and ‘so much emotional baggage’ (lines 2-3) is one that serves to foreground their ‘ultra-vulnerability’ whilst also mandating the pastoral power to protect the ‘Care Proceedings Child’ from all versions of harm.

Drawing on the discourse of the ‘Care Proceedings Child’ affords Claudia the opportunity to persuade her listener of the moral and ethical necessity of overriding instructions that she might receive from a child that are, for her, so plainly against her client’s own best interests. In that sense, the rhetorical question that follows seems perfectly common-sensical: ‘do you put that forward? That’s the child’s Instructions… and… do you just put that forward?’ (lines 6-7). Paradoxically, what she implies is that by giving instructions to go home children actually prove their lack of competence and justify her actions to protect. By implication, Claudia also highlights her perceived obligation to save her child client from potentially failing in her quest,
thereby saving her from the further harm that might cause. Consequently, what is made explicit is that by virtue of the nature of their perceived vulnerability, even the Gillick competent child will struggle to actually participate.

Interestingly, these images of the ‘Care Proceedings Child’ are so powerful that Claudia need never explicitly link professional decisions that restrict participation to the perception that these children need ultra-protection. Nevertheless, she seeds the idea implicitly as something so common-sensical and natural to be axiomatic. The taken-for-granted that is implicit here is that their participation might exacerbate their already complex needs, (‘children’s lives have become more complex as well as the awful emotional damage they have experienced,’ lines 8-9) and in that sense that Gillick competent children also need saving from their own damaged decision-making. This is especially felt so in light of the assumption that the views these children express will be criticized as contra-indicative to their welfare and paradoxically, not views of a mature and rationally-oriented child anyway (lines 4-6).

In that regard, what is illustrated is the perfidious nature of pastoral power that invokes the commitment from professionals to act in ways that promote children’s welfare by protecting them totally and in so doing, restricting children’s agency to act. Claudia’s shrug and return to her papers gave me the impression that she expected no challenge to her question; it had all been said. As a consequence, the fact the ‘Care Proceedings Child’ is positioned as too damaged to speak for themselves, paradoxically reinforces the necessity of professional participation.

Discussion
The ‘Care Proceedings Child’ provides professionals with the ultimate mandate to intervene in the lives of those children who are ‘known’ through the assumptions made about their disadvantaged childhood experiences. In that sense, the ‘Care Proceedings Child’ stands in stark contrast to the ‘Essential Child’. Importantly, however, the discourse of the ‘Care Proceedings Child’ operates very similarly to that of the ‘Essential Child’ in that it mobilises the compulsion to protect but in a more intensified, intrusive and justifiable way. Thus, the
positioning of the professional as ultra-protector means thinking about the ‘Care Proceedings Child’ in any sense beyond their ultra-vulnerability and need for ultra-protection becomes unsustainable and in consequence the ‘Care Proceedings Child’ serves paradoxically to legitimate the practice of overruling legitimate opportunities of child participation. As illustrated here, the ‘Care Proceedings Child’ discourse mandates practice where, perfidiously, professionals retain the discretion as to how to choreograph children’s participation for them to the extent that child participation becomes something quite unthinkable or at least vastly mediated and controlled by professionals. Importantly for this research, this includes systematically undermining/denying children’s opportunities to participate because within this discourse, it is assumed that it is too harmful, damaging and traumatic for children to speak and express views about their own experiences.

In this next section I turn to a construct of childhood that I term ‘the Ambiguity of Childhood,’ that was drawn on by professional participants in this research to distinguish some types of childhood from the versions of childhood constructed by the ‘Essential Child’ and ‘Care Proceedings Child’ discourses by virtue of the complex challenges their attempts to exercise agency posed to professional practice.

5.1.3 The Ambiguity of Childhood

I found the discourse of ‘the Ambiguity of Childhood’ to resonate within professional accounts of childhood implicitly to make sense of occasions where children might explicitly challenge or resist the actions, beliefs or decisions of professionals. In consequence, this discourse foregrounds the messy and complex challenges professionals face in protecting children who professionals perceive as exerting their agency or independence in unhelpful ways. As such children subjected to this discourse are framed by their determination to operate outside of those essential characterisations of childhood that inform the discourses of the ‘Essential Child’ and ‘Care Proceedings Child.’ Importantly, however, even as the exceptions to the rules, these children remain trapped by those same essential discourses in that they are perceived to still require ultra-protection. This is because the actions they take are perceived by professionals as inconsistent with those of a child who is acting in their own ‘best interests’. In that sense they
do not fit neatly with professional practices informed by the discourse of the ‘Essential Child’ as they are perceived to transgress those important delineations between dependence and independence, innocence and knowing, vulnerability and survival and cause professionals to struggle to know what to do for the best. The paradox here is that when children make a concerted effort to be heard in order to influence decision-making processes, they are regarded as behaving ambiguously. In consequence, their very attempts to exercise agency cause professionals to pay less attention to what these children say and how they (might wish to) participate.

By mobilizing the discourse of ‘the Ambiguity of Childhood,’ professionals could recruit conflicting repertoires of childhood, to re-frame children who sought to exercise some agency or control over their own circumstances as a risk to themselves, to the very practices that seek to protect their welfare and the professionals themselves who are compelled to protect them. In that sense, professionals attempted to bring children back into the discursive welfare-through-protection fold. This was not an easy task for professionals who had to engage in a lot of rhetorical work (Billig, 1987) as they navigated the paradoxes that they revealed by foregrounding practices informed by the discourse of welfare-through-protection.

In this next extract Kathryn, a Solicitor, is responding to my invitation for her to describe her professional experiences where she or another professional have focused on involving a child in their own proceedings other than being represented through their Children’s Guardian. The extract is drawn from Kathryn’s account of visiting a child in their secure accommodation placement and comparing that experience with the report she received about this same child from the Judge who he met (in her absence) in a Judge’s Meeting with Children at Court. By drawing on the discourse of the ‘Ambiguity of Childhood’, Kathryn illustrates the professionally and emotionally challenging nature of representing this boy who she describes as both immature and vulnerable whilst being too clever for his own good, maybe even manipulative, as he will sob, play-act and curse with her but then behave utterly charmingly when speaking to the Judge. This is a lengthy account which I have left intact to emphasise how her client’s position shifts ambiguously: child to adult, childish to agentic, precocious to naïve:
Extract 6: Kathryn

I had one boy who was erm, 12? He was 12 or 13, going on 35. He was a handful.

[...] And it was only when I talked to him, as I have to do about maybe the
disadvantages of returning to his mother’s care because of one reason or another,
that he refused to speak to me. He dashed out and I went out to the toilet and by
the time I had come back, he was sitting on the stairs sobbing his heart out,
being comforted by two or three members of staff and I thought it was a little bit
of play acting. So, I said, ‘that’s fine, I’m going’. I had a long journey ahead of me.

It had taken me four hours to get there, mind you! So I said ‘right, I’m going,
thanks!’ but on saying that he immediately wanted to speak to me again so... He
wanted his fag by then so, we sat outside in the garden. So we got on alright. But
he ...I could not believe it when... he wanted to see the Judge! So, it is quite a
logistical problem setting up these meetings. So, he got to Court an hour before
I did because the staff brought him from the Unit... and I think they were at least
an hour earlier than the arranged time and the Judge was willing to see him on
his own. And I don’t know what happened, because they managed to contact me
and tell me not to bother coming to Court... but she said to me that he had been ‘
absolutely charming’. I thought ‘well’, this was a boy that I had had to beg him not
to say a particular word that I take offence at. I don’t normally take offence at
expletives, but he... I mean the F word was like every 3rd or 4th word but the C
word. I had to ask him ‘please’ not to say the C word. Yes,.... so they can turn it on!’

Kathryn implicitly sets up her account by distinguishing this child’s qualities from those
professionals associate with the ‘Essential Child,’ who, as we saw takes their lead from adults.
Indeed, her qualification of the ‘boy’ (line 1) colloquially as ‘going on 35’ (line 1), suggests
Kathryn was wrestling with a child she felt challenged those beliefs about childhood entirely.
The boy’s ambiguity, confirmed by Kathryn’s description of him as a ‘handful’ (line 2), his use
of the ‘C-word’ (lines 24-25) and as someone who ‘can turn it on’ (line 25) convey her impression
that this boy blurs or breaches the adult/child and professional/client boundaries with which she
is comfortable. That the interaction ‘only’ (line 4) breaks down because she gives him bad news, ‘as I have to do’, (line 4) can be understood as rhetorical work (Billig, 1987) whereby anticipating and countering a potential criticism, for example, that she upset a child, she positions herself as a responsible professional who is only doing what she is required to do. In contrast, her child client apparently changes repeatedly and inconsistently, from behaving like an adult to behaving like a child, which Kathryn seems to imply is evidence of bad agency (Bordorano & Payne, 2012): his insincerity and tendency to manipulate (‘he refused to speak to me’, line 6 and ‘sobbing his heart out’, line 8). Whereas such responses might be understandable in a child, Kathryn’s assessment is that he engaged in ‘a little bit of play acting’ (lines 9-10), which she confirms by noting how quickly he recovered when she announced her departure, thus framing his actions negatively as intentional and purposeful; suggesting a level of sophistication.

Kathryn reinforces those negative connotations through her account of his attendance at Court, which she begins; ‘I could not believe it when…’ (line 14), signalling that what she is about to describe is a departure from the norm. Moreover, the reported description by the Judge of her client as ‘absolutely charming’ (line 21) is construed as further evidence of his manipulation, contrasting it with the bad language he had previously used in their own meetings. She concludes with the generalised statement ‘Yes, so they can turn it on’ (line 25) as if her account has conclusively shown that the inconsistencies in her client’s behaviour are evidence that he, and other child clients, (‘they,’ line 25) are too sophisticated and not to be trusted, as they pose a risk to professional practice, and even potentially to her professional standing.

The speaker’s negative account of the boy can be seen to function as a correction to these challenges to her position. If positioned other than as a child, as some of his behaviour suggests, implies he does not require protection. So her special efforts (to take a lengthy journey to visit him, to organize a meeting with the Judge) and protective measures (advising against the return to a placement with his mother that is not in his best interests) are perhaps not required or justified. She re-establishes her relative status as an adult, by implying that this boy is not a good child or, perhaps, not a real or proper child (‘going on 35’ line 1). This illustrates
what I indicated earlier, that paradoxically the act of attempting to be heard, can backfire when it is perceived as 'overacting', antithetical to their welfare, or as in this present case, insincerely motivated.

As a result of their ambiguity, Kathryn makes clear that supporting their participation is not perceived as straightforward, either. This is because, as we saw with Claudia (extract 5) and Maggie (extract 4) above, some children can be too vulnerable to participate, notwithstanding flashes of ability and intelligence that might make this decision questionable, or because some children are too sophisticated or agentic to be helped by the same professionals who they are pushing to the limit.

This next extract is taken from my interview with Christine, who is a Social Worker. In responding to my invitation to describe experiences when either she or another professional has had to focus more on involving a child in their own public law proceedings, Christine also talked about the challenges posed for her working with children who resist the plans professionals make to protect them, by leaving their foster care placements to stay elsewhere. Importantly, what this extract reveals is the nuanced shifts that occur to re-constitute welfare through repertoires of protection, and which simultaneously demonstrate the ambiguity of some children whose words and actions set them beyond the realms of the 'Essential Child' but paradoxically also (and similar to the case we have seen above) beyond the perception of them as competent and mature enough to participate:

Extract 7: Christine

1 I have sent children home to situations that contain risk… but actually the risk of
2 them remaining in foster care and going missing or trying to get home and put
3 themselves… you know, thumbing lifts or whatever (2 seconds) and you have to
4 decide ‘actually perhaps you can manage that risk better knowing where they
5 are than worrying about what they’re gonna do next really […] I think its very
6 much them expressing their wishes and feelings isn’t it?… in a very blunt
7 (2 seconds) blunt way (laughing) […] and alongside that you weigh up ‘well,
actually I don't have the energy to go out the front door’... But you have got 
other children who you know operate much more independently and would have
the knowledge, the skills and the streetwise-ness to be able to go and do it. It
wouldn't bother them to get on a train from wherever you put them… they would
find their way back….really. Whereas with others I think it's an empty threat,
really… and that’s a judgement and an assessment you make about a child.

Christine mobilises the discourse of ‘the Ambiguity of Childhood’ through a number of
conflicting repertoires around agency/independence versus protection/risk (lines 1-4) and
streetwise/skillful versus passivity/dependence. She embarks on rhetorical work (Billig, 1987)
this involves in order to emphasise the challenges professionals face in trying to reconcile the
irreconcilable: protecting children from harmful experiences in their parents’ home, whilst also
respecting those children’s ‘wishes and feelings’ (line 6), to go against the plans professionals
have made for them and return to that very environment.

Importantly, however, it is not children’s verbally expressed views that are described as
problematic for professional practice, implying that some children do not really pose a risk to
professional plans to manage their protection. These are the passive or dependent children
where ‘you weigh up ‘well, actually I don’t have the energy to go out the front door,” (line 8)
meaning Christine can safely conclude that ‘it’s an empty threat really,’ (line 12). The
implication here is that ‘docile bodies’ (Foucault, 1977, 171) can be protected, albeit against
their will. They are contrasted with those who are problematic by virtue of their perceived
agency. Here, however, agency is turned in on itself. This is not the type of agency Christine
associates with children who are sufficiently mature to know what is best for them. Her
construction of agency implies impulsiveness, the actions of children who are reckless about
what is best for them; those who are determined to transgress those essential norms of
childhood, which operate to position adults as the protectors and providers of childhood. This
is ‘bad agency’ (Bordorano & Payne, 2012) displayed by children endowed with ‘the skills and
the streetwise-ness’ (line 10) to act. So paradoxically, the potential of actually enacting ‘wishes
and feelings’ emerges as potentially harmful. It is those very unambiguous and clear examples
of enacted resistance; ‘going missing or trying to get home and put themselves... you know, thumbing lifts or whatever,’ (lines 2-3) and, ‘It wouldn’t bother them to get on a train from wherever you put them... they would find their way back,’ (lines 11-12) that constitute what Christine refers to as a very ‘blunt’ (line 7) expression of the child’s ‘wishes and feelings’ (line 7). Indeed, Christine’s laughter (line 8) might hint at the lengths to which children must go before their ‘wishes and feelings’ are amplified above the noise created by welfare-through-protection practices. In this case, it is those enacted ‘wishes and feelings’ themselves that are problematic simply because professionals cannot ignore them. Paradoxically then, professional reluctance to pay heed to children’s ‘verbal’ participation forces them to move onto embodied/physical participation. In this instance Christine speaks about children running away to their parents, but as we shall see in chapter 6 (extract 15), a proceedings-experienced participant talks about instances where she has resorted to outbursts of anger in an attempt to be heard. In all these scenarios, the paradox is that by being forced to such measures (anger, pleading, dramatics, or running away), children make themselves more vulnerable, and in the process, less credible by displaying insufficient maturity to participate.

Discussion

The discourse of ‘the Ambiguity of Childhood’ encapsulates all those paradoxical framings or repertoires of childhood on which professionals draw to make sense of the complexity of protecting children who operate beyond the construct of the ‘Essential Child’ and ‘Care Proceedings Child’. As I have demonstrated, this becomes necessary primarily because professionals are so wedded to practice that focuses on protecting compliant children. This is quite paradoxical because what professionals are struggling with is the consequence of being trapped or disciplined into welfare-through-protection discourses that they cannot escape, even when the practices those discourses produce are not working. In that sense, professionals would struggle less with these children if they were less settled within the discourses of the ‘Essential’ or ‘Care Proceedings Child’ because they would not perceive them as so ambiguous; still, we can also see that it is hard to operate outside those discourses.
Paradoxically then, it is by gauging children against the 'Essential Child' that professionals can reassert their own expertise as the child’s protector. This is because it becomes possible to justify re-calibrated practices of protection around children whose views are constructed as untrustworthy and whose behaviour is seen to illustrate their immaturity as it challenges proper attempts to keep them safe. In that regard, this construct of childhood operates as a way to help professionals manage their own uncertainty or sense that their professionalism is under threat. Thus, by positioning children as difficult, manipulative, streetwise and challenging, professionals reassert their own expertise and authoritative voice and maintain the position of conscientious and responsible professional and adult, and moreover, the vital mediator of childhood.

5.2 Constructions of Child Participation: The Professional Participants

In the second part of this chapter, I examine the discourses that professionals recruited and mobilized to make sense of their practice of child participation in public law proceedings. The three discourses I found to be to be important to how professionals portrayed their beliefs and practice in relation to child participation are the ‘Illusion of Participation,’ ‘Participation as Formulaic’ and ‘Participation as Disruption.’

5.2.1 The Illusion of Participation

The discourse of the ‘Illusion of Participation’ encapsulates the repertoires that construed participation as a kind of double bluff or paradox and pre-dominated in the talk of professional participants. The Illusion discourse was always there, implicitly or explicitly, re-enforcing welfare-through-protection practices that simultaneously served to undermine or deny aspects of the child’s participation. Thus, when balanced against the primacy of protection to children’s welfare, professionals spoke about participation as undesirable and ultimately illusory. In order to justify these practices, professionals had to construct participation paradoxically as an ideal to which they are meant to aspire, but which in reality is implicitly understood as an aspiration. Consequently, the discourse of the ‘Illusion of Participation’ operated to keep children away from direct involvement with evidence and the Courtroom and diminished their participation to professional participation.
As we shall see from the extracts I analyse below, when I asked professional participants to speak about those opportunities for children to participate by bringing them more directly into contact with evidence or the Court, they struggled to speak positively about child participation, even on occasions when they seemed to become aware their views contradicted practice guidance.

This is a situation that confronted Libby, a Solicitor, when she was responding to my question about how comfortable she was with children of different ages participating in their own proceedings by instructing their Solicitor, meeting the Judge, giving or seeing evidence. Libby begins by firmly stating that children just cannot participate in their own proceedings that much because she and most lawyers want to protect children from that. This is because they are already vulnerable and this will exacerbate that. Libby introduces the subject of how participation might operate in the criminal justice system, where children can be compelled to give their accounts about certain events as prosecution witnesses or choose to give those accounts as defendants. In short, they are involved much more frequently in criminal proceedings than happens in the Family Court. When she introduces the criminal Court comparison, the very firm stance she had taken about the necessity of having professionals speak for children wavers:

Extract 8: Libby

1. I think lawyers… not all lawyers, but the majority of lawyers don’t have the
2. mindset that the child should be that involved. They… and I think that’s a
3. protection issue, in fact, … I think lawyers want to protect these children from
4. being involved in Court proceedings […] you feel the child has suffered and you
5. don’t want them to suffer any more by being as involved in the Court proceedings
6. as… as a child would be in criminal proceedings and… to be honest,… we have to
7. question… what exactly is the difference (3 seconds)? What is the difference in a
8. child of five giving evidence about sexual abuse via video link in the criminal Court
9. or a child of five in care proceedings giving evidence? (looks down, voice drops)
In common with others (see extracts 2, 6 and 7 above), Libby also seeks to affiliate herself with the broader professional consensus (‘lawyers,… not all lawyers, but the majority of lawyers,’ line 1 and ‘I think lawyers,’ line 3), that ascribes to an approach to child participation informed by and constructed through protection-focused repertoires (‘that’s a protection issue, in fact… lawyers want to protect,’ line 3). For her, the urge to protect all children from participating in their own proceedings is almost instinctive or carnal, rather than something that is objectively assessed. It is something she feels: ‘you feel the child has suffered and you don’t want them to suffer any more by being as involved in the Court proceedings’ (lines 4-6). Indeed, that feeling is so powerful so as to make it common-sensical that children need to be protected from their own participation because that would mean making them suffer even more. Thus, for Libby, child participation can only exist as an aspiration and seldom as a reality as the inevitable suffering that is implied renders the ‘Illusion of Participation’ complete and incontrovertible.

Interestingly, Libby then chooses to draw a parallel with criminal proceedings where children who participate are expected to be ‘involved in the Court proceedings’ as witnesses or defendants and speak about events they experienced or witnessed, many supported by special measures such as speaking by video link. Having chosen to introduce this parallel, she is forced to confront the inevitable; why there and not in the Family Court? This interesting digression potentially unsettles or disrupts the salience of her own argument however as she falteringly reaches the conclusion that ‘we have to question… what exactly is the difference (3 seconds)? What is the difference…?’ (lines 7-8). It is unclear if she means to imply criminal proceedings should also return to processes that exclude children or whether the inference she might draw is that if they can do it in Criminal Courts, it could be done in Family Courts. Whatever she meant to say, Libby potentially invites contradiction of the position she has so carefully constructed. She runs the risk of being found out that elsewhere, children are required by law to do what she and her professional colleagues perceive as too harmful. Importantly however, the realization that in other jurisdictions children are participating in ways that are unthinkable for her, causes her to hesitate (line 7). She has no more to offer, hence the rhetorical questions with which she finishes. I sensed this was an uncomfortable professional dilemma that Libby did not wish to pursue further when her voice dropped as she looked down and stopped talking.
As can be seen from this next extract, Donna, a former social worker, creates the impression of participation as illusory by drawing on a number of protection-related repertoires that served to undermine the idea of child witnesses. Importantly, the heavily weighted emphasis on repertoires of protection produced a construct of the ‘Illusion of Participation’ in two ways because even where it might still be suggested that children might qualify to participate if it were safe to do so, what is made explicit here is that there would be no purpose in them doing so, because what children might say as witnesses can be mediated effectively by professionals in the child’s stead:

Extract 9: Donna

1. What’s the purpose of them being involved in these proceedings, really? So, if
2. it’s a witness, my priority is going to be about their safety and their involvement
3. with the family… whether this places the child at any further risk or not… to be
4. a witness. And if it’s down to a ‘he said, she said’ situation, then I think that… or
5. there’s a risk of a parent cross-examining a child… those sorts of things… erm,
6. (2 seconds) there would have to be a very good reason why I would think there
7. would be value in that for a young person (2 seconds). I would hope other
8. professionals can provide enough evidence to avoid that.

The crux of the discourse of ‘Participation as Illusion,’ and what makes it so effective here, is that demonstrably, there is no sufficiently persuasive ‘purpose’ (line 1) or ‘very good reason’ (line 6) to justify that a child participate in their own public law proceedings as a witness. Of course, that only makes sense when the purpose in question is one beneficial (or not) to the proceedings rather than the child. Indeed, making any child participation contingent on it being purposeful to the proceedings, as is implied here, serves to put the child’s involvement in their own proceedings further out of reach.

When placed in the context of the harm their participation can do, abrogating child participation in any way other than as mediated by the child’s proxy voice, seems axiomatic. Thus, by employing the discursive strategy of extreme case formulations (and pertinently in this regard,
the extremely unlikely potential for a parent to cross-examine a child (lines 5-6) in practice.

Donna re-formulates the risks to which children, who participate as witnesses, as a certainty. Read this way, foregrounding the adversarial nature and adult-centric practices of Court Hearings ("if it’s down to a ‘he said, she said’ situation," lines 4-5), suggests that by being asked to speak in Court, children are inevitably exposed to an environment that is so obviously harmful and unthinkable so as to simply rule them out as a matter of course. In so doing, Donna can be described as invoking pastoral power (Foucault, 1983b) by positioning herself as both expert and protector of children’s welfare and thus, justifiably cautious about the prospect of any participation being beneficial to the child.

Interestingly, presenting the idea that ‘other professionals can provide enough evidence to avoid that’ (line 9) hints at the taken-for-granted practices in public law proceedings that are organized around professional participation. Thus, invoking repertoires of protection to exclude children also serves to highlight how professionals organize child participation through relations of power. The illusion that is created is that child participation exists, albeit in a paradoxical way, where both welfare and justice can be served through the mediated channels of the professional proxy. As will be discussed in chapter 6, proceedings-experienced participants take issue with decisions professionals take to prioritise what I term professional participation. According to them, the assumptions about welfare and justice that mandate professional participation to the detriment of child participation, are actively detrimental to their own well-being and thus at odds with the positive effect professionals hope, or perceive, professional participation has.

This third and final extract in this section is used to illustrate how, through their practice, professionals avoid drawing attention to the ‘Illusion of Participation,’ but in so doing, reinforce it. What was resonant for Scott, a Barrister, was how the discourse of the ‘Illusion of Participation’ served to maintain professional credibility and integrity because it provides a reason for not even raising the question of child participation with children. The extent of the importance of the discourse became clear when I asked him why it was he thought children do not have more of a presence in their own proceedings:
Extract 10: Scott

None of us are going to be supporting children becoming more involved in proceedings that are taking place in accordance with that model we have been discussing where children are not particularly involved and the children have got a Guardian to purportedly be their voice. [...] I think if I had asked a really direct question, which I'm quite sure I never really asked... because you would be concerned about the answer you would get, erm... I think you would have plenty of children who would say 'well, I would like to see what's going on. I would like to come along and I would like to see the Judge', but the problem with any lawyer asking that question is that we can't give the children the erm,... what they're asking for if you did put that question.

Once again, Scott draws on the professional collective 'us' (line 1) to demonstrate the power of the discourse of illusion operating around professional participation such that '[N]one of us are going to be supporting children becoming more involved' (line 1), within a system where it is taken-for-granted that 'children are not particularly involved' (lines 3-4). This suggests that the deeply embedded belief in professional participation serves to perpetuate these practices and usurp the more active versions of participation some children seek. In common with the academic literature (see chapter 2), the concern that is expressed here; that a proxy can only ever 'purportedly be their voice' (lines 4-5) is revealing as it makes explicit that child participation does not really exist; it only claims existence through policy documents and guidance. In that regard, 'we can't give the children the erm,... what they're asking for' (lines 10-11) becomes doubly problematic. Firstly, it serves to present the 'Illusion of Participation' as a fait accompli. Scott already knows that it will not be possible to give children what they might ask for and so he does not even want to ask. This is a primary paradox related to participation as it begs the question as to why it is not possible to ask children what they might like to do and then manage any potential for disappointment. Instead, the 'Illusion of Participation' acts as an absolute bar to the potential for participation because in order to avoid not giving children what it is assumed they might want (or refuse what they might ask for), the whole question of child
participation is closed down before it can be raised. Secondly, it serves to perpetuate the myth of children’s participation as filtered through the proxy voice, which has been discussed at length in chapter 2. What this extract adds to that discussion is an insight into how difficult it is for this professional to escape the paradox of participation inherent in a system where child participation ceases to exist in public law proceedings altogether because professionals consider speaking to children about it as a contradiction in terms.

Discussion

What makes the discourse of the ‘Illusion of Participation’ so powerful is that it brings together a number of well-rehearsed social and institutional repertoires around the protection of childhood and the protection of children from harm, to make thinking about actual child participation very difficult and challenging. Thus, whilst other forms of participation exist, they do so as ideals and thus only to remind us of their potential to do harm. The discourse of the ‘Illusion of Participation’ therefore reinforces what is presented as the only professionally desirable approach to child participation, which is paradoxically not dependent on the participation of the child at all, but on the professional. In that regard, what is constructed by the ‘Illusion of Participation’ is that the best form of child participation is participation that does not involve children. Taken this way, what each of these extracts illustrates is the real struggle professionals face in talking about children participating in their own proceedings in any other way: it is simply undesirable, unthinkable and deeply un-protective.

Crucially this discourse also serves to validate the construction of participation that exists in name only, through practices as shaped by the operation of pastoral power, while still credibly operating within the law, and promoting protection. As a result, presenting child participation as inherently illusive, allows professionals to maintain their credibility and professional integrity as it becomes possible to do child participation by not doing it, because that is in children’s best interests.

5.2.2 Participation as Formulaic
Professional participants in this study also drew on the discourse of ‘Participation as Formulaic’ to reinforce and perpetuate the taken-for-granted nature of existing child participation practices through the professional proxy framework. However, it also served to confirm the parameters or limitations to child participation to those that fit the formula. In that sense, the formula or process acted as sufficient confirmation of the actuality of child participation. In consequence, child participation is not perceived as something significant but rather as just another thing to get ‘done,’ in order to move on to the more pressing task mandated through the discourse of welfare-through-protection. So, what this discourse highlights is the routine and standardized methods of practice professionals use to cope with the illusion of participation because referencing ‘standard procedures’ or professional ‘habits,’ affords a semblance of reality to child participation. This was a shared professional pretense that meant that anything related to child participation which fell outside the formulaic remit they had, could ordinarily be glossed over as not meeting ‘standard procedure’ requirements. The paradox that is implicit in the discourse of ‘Participation as Formulaic’ is that whilst children are perceptibly invited to participate in their own proceedings, it is only in ways that limit the child’s opportunities to participate to those hierarchical and largely tokenistic versions I term professional participation. In this regard formulaic participation is a version of participation that exists to nod in passing at Article 12.

In a number of interviews, professional participants expressed or implied an inability to alter or influence the status quo about their participation-related practices. This is because by framing these practices as routine, standardized and repetitive, professionals seemed to infer that they were working in accordance with prevailing legislative and policy frameworks and that consequently, they had little ability to influence how children were expected to participate. The implication was that these practices had become hard-wired and difficult to challenge and thus served to trap professionals into systems that they could not control or influence.

This next extract offers a powerful illustration of the ways in which ideas about professional participation are hardwired into thinking about child participation and which have become very difficult to see beyond or escape. In responding to my question about why children don’t have more of a presence in their own proceedings, Christine, a Social Worker, reflected on the
practice of child participation as being so regulated by professionals that it is performed as a habit. When given the opportunity to reflect on these practices, as she had in this interview scenario, Christine ponders the link between professional habits that equate child participation with ‘wishes and feelings’ and the limited role children play in their own proceedings. Despite those important insights, what this extract reveals is how difficult it is for professionals to escape the paradox inherent in the discourse of ‘Participation as Formulaic,’ and imagine alternative practices of child participation beyond professional participation:

Extract 11: Christine

1. I think it's just habit, really... lots of it... is habit. Lots of it is that we don't think enough about their presence in their proceedings. We,... again, you revert to a formula of using the child's wishes and feelings,... so, you put a couple of sentences in there of a conversation you had with them on a specific date. And therefore, erm,... social workers are perhaps as guilty of not making the child present in their own proceedings [...] use direct work tools with children, you know? Don't over-analyse them but get them to... to draw a picture, get them to do a picture with buttons, get them to do, erm ... the three islands and which island they want to live on and then put that in your final evidence because that is their evidence. That is what they are thinking.'

Implicit in describing something as 'just habit' (line 1) is that it is something automatic and repetitive. Describing something as a habit can therefore elevate such practices as being above reproach and insulate them from any criticism. However, as recognized by this speaker, when something becomes habitual it becomes a practice where ‘we don't think enough’ (line 2) and ‘you revert to a formula’ (line 3). The power of the discourse of ‘Participation as Formulaic’ is revealed as Christine wrestles to re-construct child participation in ways that break the existing ‘habit’ (line 1) or ‘formula’ (line 3) but in doing so, seem to re-enforce it. Thus, whilst explicitly recognizing the importance of the child’s ‘presence in their proceedings’ (line 2) the actual strategies she proposes, such as drawing a picture, or using buttons, and the three islands are in themselves standardized procedures that are not solutions but simply additional tasks that
perpetuate the child’s absence and merely re-enforce the formula that mandates professional mediation of child participation. Indeed, it could be argued that focusing on the importance of professional toolkits, such as arts and crafts or the three islands, designed to elicit the ‘wishes and feelings’ of the child in a less direct way that requires careful interpretation (lines 7 – 9) elevates the role of the professional to the child’s participation even more, thereby trapping both professional and child into even more formulaic practices.

The suggestion that these processes constitute something akin to ‘their evidence, that is what they are thinking’ (line 10) is one that is as complex as it is perhaps crucial to shedding light on why this professional perceives the practice of child participation as habitual. That ‘wishes and feelings’ are ‘put [that] in your final evidence’ (line 9) implies that professional practices around child participation are themselves caught up in the broader practices of formulating final evidence about children’s welfare. Read this way, participation might not be the only aspect of practice that professionals recognise as formulaic, which resonates with those matters discussed in chapters 1 and 2 where I discussed how welfare has become organized according to a checklist of primarily protection-focused issues. Seen in this light, the seemingly perfunctory practice of child participation that meets their professional obligations is framed as both reasonable and inescapable, notwithstanding that it glosses over the one thing that Christine expressed as being important: the child’s presence.

Interestingly, and although they were in the minority, some professionals in this study described how they wrestled with the consequences of practicing ‘Participation as Formulaic’ in that it became increasingly difficult to gloss over the child’s absence from their own proceedings. One such professional participant who expressed those views was Laura, a retired Children’s Guardian. In this extract, Laura is recounting a discussion she had with a Solicitor, with whom she used to work about recent changes to the practice Guardians used to speak to children about their ‘wishes and feelings’. The re-telling of this event took place in response to a follow up question I asked as Laura was speaking about her experiences of a child being more involved in their proceedings than being represented through their Guardian. I asked her whether she felt there were any circumstances where broaching the subject of proceedings
with children might be sufficiently protective. By re-telling me the tale, Laura was giving a secondhand account of what took place when her former Solicitor colleague accompanied a different Guardian to see an older child and as part of that visit, sought that child’s ‘wishes and feelings.’ As discussed in chapter 1, usually Solicitors only attend visits with Guardians to see children if there is a question mark about whether a child might be Gillick competent and thus potentially able to instruct their Solicitor directly. The implication is that this was a meeting that involved a child who might be sufficiently capable of participation by instructing their Solicitor directly.

This is a lengthy extract, but I re-produce it in full in order to provide context to her talk. The focus of my analysis is in relation to the discursive work that is achieved by and through the re-telling of this story:

**Extract 12: Laura**

1. One of the Solicitors that I used to instruct fairly regularly, she spoke to me one day ‘I just don’t know … you’ve never done this, but I was out with another Guardian and we went to see this teenager at school and she takes out this clipboard and she’s got this tick box form and she went through that and that was that. She didn’t actually address the issues we had come to see this child about at all.’ And she said, ‘at the end of the meeting, this kid was just looking totally bemused’. But this was the kind of stuff that we were being increasingly expected to do: ‘fill in the questionnaire, fill in this, fill in that’. ‘No, absolutely not!’ You go and see a child in care proceedings, **because** there are Court Proceedings, which is a **huge big** deal and if you don’t ever mention them, the child is really perplexed about why you have come to see them. If you’re not gonna talk about the elephant in the room … that is the most important thing to them! The fact that they are probably *in care* somewhere and separated from their family and there are issues around contact and stuff that has happened to them and then you’ve got a Court involved as well and ‘Courts send people to prison and do all sorts of other things … why aren’t you talking to me about it?"
Introducing her professional dilemmas around the practice of child participation, through the use of a story told by another professional provides a platform from which she can question this ‘stuff’ alongside others (‘One of the Solicitors that I used to instruct fairly regularly, she spoke to me one day’ lines 1-2) as an informed and trusted insider but at a step removed (“I just don’t know … you’ve never done this, but…”, (line 2). From this distance, the story becomes a helpful device through which to disrupt the assumption that recent guidance to Guardians around ascertaining children’s ‘wishes and feelings,’ is effective.

Telling a story is also an effective device by which to contrast current practice with previous practice and set up the practice of the professional in her story as a contested practice (Boyett, 2008). Current practice, signified by the ‘clipboard’ and ‘tick box form’ (line 4) is introduced as something distinctive and unfamiliar. By implication, Laura distances herself from practices that she infers are brief, formulaic, unimaginative, formal and impersonal: ‘she went through that and that was that’ (lines 4-5).

Using direct speech is another effective rhetorical device that is used here (lines 15-17), to conjure up the image of the baffled child sitting across from an equally baffled professional: neither able to make sense of what they are meant to be doing. Here the use of direct speech encapsulates the confusion Laura perceives is caused by the increasingly formulaic institutional practices around child participation that leave children ‘bemused’ (line 7) and ‘perplexed’ (line 11) and her with ‘no idea’ (line 17). It is an attempt then to make sense of the consequences for all those who are regulated by these processes. This is borne out by the vast dissonance implied by her descriptions of the child’s proceedings as simultaneously a ‘huge deal’ (line 10) for the child but also ‘the elephant in the room’ (line 12) for the professional. The implication is that these perceptions of the child’s proceedings and thus the significance of the child’s participation in these proceedings are very difficult, if not impossible, to reconcile. What is implied is that instead of being a tool that facilitates participation in the child’s own proceedings, these formulated practices serve to tightly regulate and constrain what children can say and be.
heard to say to professionals. Indeed, it is suggested that these practices also serve to constrain what professionals can say and be heard to say to children. These are ideas that I will develop further in chapter 6 when I discuss the constructions of participation on which I found proceedings-experienced participants to draw to highlight the paradox of participation from their perspective.

Discussion

What these extracts reveal is the inherent tension that pervades the discourse of ‘Participation as Formulaic’ and which I argue, results in the practice of participation as paradoxical. On one hand, it offers a sense of certainty by giving professionals a way of coping with the ‘Illusion of Participation.’ It sets boundaries within which professionals then practice; boundaries that are prescribed and tested. On the other hand, those boundaries around which child participation is formulated can also be perceived as restrictive and confusing. They serve to constrain the sharing of information and decision-making, in ways that might be regarded as tokenistic (Hart, 1992). In that sense, it serves to perpetuate child participation as professional participation because the discourse of ‘Participation as Formulaic’ has the effect of structuring child participation according to a formula that foregrounds professionally mediated, correct, practice. Simultaneously and paradoxically this is a structure that is expected by professionals and indeed required by the system and in that sense the product of disciplinary power (Foucault, 1977). But as hinted at by Laura, these practices are restrictive and confusing for those whose participation it regulates, and thereby undermines them and those who are charged with implementing it.

5.2.3 Participation as Disruption

The discourse of ‘Participation as Disruption’ was recruited by professional participants to reconcile the paradoxicality of attempting to do child participation whilst also doing child protection, and the cost that is involved in facing that challenge. This discourse is mobilized to explain away occasions when despite their very best efforts to promote it, child participation poses such insurmountable challenges to professional practice that professionals present them as difficult or impossible to overcome. Importantly, by recognizing the significant toll caused to
them by practicing child participation through a lens of welfare-through-protection, professionals also make explicit the paradoxicity of participation as ultimately no-one is perceived to benefit.

Often, professionals’ talk about child participation went hand in hand with their talk about the more onerous professional burdens the child’s participation placed on them, to ultimately legitimize their resistance to versions of child participation that bring children more directly into their proceedings. This is because professionals were forced to confront the ensuing clash of professional discourses around justice (the child’s participation is beneficial because it has evidential value) and protection (the child’s participation is not beneficial because it is has no welfare value) when they found themselves in the unusual and often unchartered territory of supporting children to participate in their proceedings beyond giving their ‘wishes and feelings’ to the professionals.

This extract is taken from a longer account that a Barrister, Trudie, gave in response to my initial question about her professional experiences of representing a child who has wanted to be more involved in their own proceedings than being represented by their Guardian. Her account relates to a time when she was representing a Gillick competent child. She describes representing children as being much harder than representing adults because she has to worry about protecting them and not upsetting them. This means she feels she needs to make decisions about what steps she should or should not take in preparing her child client’s case for hearings. Here, Trudie is responding to my follow up question about whether she found it harder to represent the child when they were instructing her directly than when her instructions are coming from the Guardian:

**Extract 13: Trudie**

1. **Oh yes! It’s a nightmare! ... It’s a complete nightmare, because you have to**
2. **manage their emotions in a way that’s harder than managing an adult ... and**
3. **balancing up what they should see, ... what you need to protect them from, ...**

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57 A child who has been deemed sufficiently competent to instruct their Solicitor and Barrister directly
4 and you don’t want them to see everything in the papers if you think it’s gonna
5 cause them real difficulty erm, … or emotional upset. So, it is blooming hard work!
6 And then you’ve got to think about whether you’re gonna do statements from
7 them and what you’re gonna show them to do that … Statements? Are you gonna
8 show them Judgments? … and all this kind of thing.

The difficulty Trudie perceives in representing children is in reconciling child participation with
the professional’s ‘need to protect them,’ (lines 3-4). Indeed, foregrounding protection, leaves
very little room for thinking about participation save in terms of how it affects her practice. The
description of practicing participation as ‘a nightmare… it’s a complete nightmare’, (line 1) and
‘blooming hard work’ (line 5) really conjures up the disruptive nature of the child’s participation
to her. Importantly, Trudie is describing the intensity of this protective grip in circumstances that
are not directly related to what children might say they want to happen (‘wishes and feelings’),
but in relation to instructions required from a client so that their advocate can prepare to fully
present their case. In that regard, the focus is on what documents children see, even before
they are able to say anything, framing children’s participation as a nightmare even before the
child has uttered a word.

Implicit in her account is a sense that Trudie will be trapped in this nightmare for the duration
of the proceedings because all the while the child participates, Trudie will be forced to confront
situations that she feels can quickly become un-protective. This points to the inescapable and
powerful drive or ‘need’ (line 3) to protect children from their own participation (discussed in
chapter 2), even when to do so is significantly disruptive to the professional job of presenting
the child’s case, and moreover in circumstances when there is no need to as the child has
already been given permission to participate. Indeed, perhaps quite inadvertently, this
professional seems to be repeating the same ultra-protection practices that prevent children
from accessing these versions of participation in the first place. The implication is that when
operating within a system that compels protection, it is nigh on impossible for professionals to
release the protective grip on child participation. Indeed, it appears to be tightening as, for
instance, even when children are approved to see evidence and do statements it seems
impossible to avoid attempts to limit that intrusion into their own case by chipping away at those elements to their participation that are perceived as the most harmful ('you don't want them to see everything' line 4, and 'you've got to think about whether you're gonna do statements', line 6).

Interestingly, Trudie’s compulsion to protect extends to trying to protect children from being affected by their proceedings and importantly by their direct participation in them ('you have to manage their emotions', lines 1-2). This is an impossible task and constitutes another form of paradox because professionals are seeking to protect children from something that is already viscerally present, albeit hidden directly from the proceedings. As we shall see in chapter 7, proceedings-experienced participants associate significant affect, crucially, with their limited participation in their own proceedings and in this sense, are more affected by attempts professionals make to contain children’s emotions.

I draw my final illustrations of the discourse of ‘Participation as Disruption’ from my interview with Maggie, a Children’s Guardian. She is responding to my question about how her practice is affected when a child appears at Court without warning, and wants to participate in their Hearing. When described through the lens of protection, the mere action of children entering this public space is perceived as a sufficiently harmful transgression into an adult arena, to trigger a series of protection-focused decisions for Maggie. Implicit across this extract is the professional conundrum that in protecting the child and ensuring his supervision in the Court building, the professional has to exclude herself from the Hearing, also. Thus, paradoxically, the child’s wish to participate is implicated in causing a double bind, as it has confirmed the absence of the child from the Courtroom and caused the absence of the Guardian. As a result, no-one is in Court hearing what is being said and giving instructions to the child’s advocate:

Extract 14: Maggie

1. Some of the Courts aren’t appropriate for the young person to be sitting there
2. waiting on their own, so what do you do then? Does someone have to miss out not
3. coming in to hear it all?... or it’s err … and I have quite regularly said that ‘I am quite
4  happy to sit with them‘ as I know my advocate will feed back to me ... but then am
5  I the right person?... because they... like you say, they think I‘m gonna be at Court
6  pushing for everything they think they want, so ... and if I‘m missing, how can I be
7  putting my view across then?

The child‘s very attendance at Court prevents Maggie from doing her job. She cannot ‘hear it all‘ (line 3), because she is charged with his care. In that sense, the child is constructed as a logistical problem: a delicate parcel that is passed around until it finds a temporary custodian. The implication is that solving the logistical problem causes inconvenience for those who are otherwise there to do an important job. If she attends the Hearing, she is not available to physically protect the child, implying that the child cannot come into Court because that is harmful, but equally cannot sit outside unsupervised, because that is also harmful. However, by supervising the child, she is not available to protect the child‘s position in the Courtroom.

Here then, child participation is constructed as a disruption to the ‘really important‘ professional task of giving instructions to the child‘s advocate in Court about the child‘s welfare. That is implicit in how she couches the value of the child‘s ‘wishes and feelings‘ as refracted through a professional lens: ‘they think I‘m gonna be [...] pushing for everything they think they want,‘ (lines 6-7). This is resonant of the concerns raised in the academic literature about the child‘s voice in that here, Maggie implies that what transpires in the Courtroom has very little to do with the child‘s expressed views and much more to do with how those views are re-interpreted by professionals in accordance with the child‘s welfare needs (Thomas & O‘Kane, 1998; Sawyer, 1999; James & James, 2004; Lonne, 2008). In that regard, it is actually her absence from Court that is the ultimate disruption caused by this child‘s wish to participate. His presence means she is not able to participate and push forward the child‘s welfare case, as she had expected. This suggests that paradoxically, the true value lost is the participation of the professional and the contribution that might have been made by her if the child had not attended. By contrast, the child‘s presence is framed as a hindrance and not at any point as beneficial, even to their own welfare.
Discussion

The function of the discourse of ‘Participation as Disruption’ is to provide professionals with a way of coping with the challenges of child participation that bring children directly into contact with their own proceedings. Read this way, it operates to preserve the status or credibility of the professional who is positioned as trying to do their best by children in very difficult circumstances. However, it also performs the function of giving a good reason why it is (apparently) inevitable that children do not participate more regularly in their own proceedings, as it prevents professionals from being able to focus on doing their job. The power of this discourse is that by setting it up against the pillars of welfare and justice, doing child participation in any way other than through professional participation becomes a professional contradiction in terms.

I continue my analysis of how ‘childhood’ and ‘child participation’ are constructed in chapter 6. Here my focus is to examine those ideas in the context of the experiences of proceedings-experienced participants. This involves an investigation of how the trouble that arises between repertoires of child participation and child protection is experienced, understood and potentially reconciled by those who have in the past been subjects of such proceedings; the proceedings-experienced participants in my study.
CHAPTER 6 - THE DISCOURSES OF CHILDHOOD AND CHILD PARTICIPATION DRAWN ON BY PROCEEDINGS-EXPERIENCED PARTICIPANTS

Introduction

In this chapter I focus on how proceedings-experienced participants in this study made sense of their experiences of child participation in the public law proceedings arena. These are the participants then who were subjected to those dominant ideas and beliefs implicitly and explicitly embedded in the welfare-through-protection discourse. As we shall see, the way proceedings-experienced participants make sense of ‘child participation’ relates to the sense they make of themselves as ‘children’ who were subject to the practices they experienced in their public law proceedings. In that sense, they drew on ideas about themselves as social actors, engaged in processes where they interacted with professionals in order to be informed and heard. Key to my analysis of the talk of proceedings-experienced participants was their expressed lack of control over the versions of participation, which limited how they might participate and thus be informed and be heard.

This chapter is organized into two separate but intersecting parts where I examine the discourses drawn on by proceedings-experienced participants to make sense of their experiences of ‘childhood’ and ‘child participation’ as children who sought to participate in their own public law proceedings. I am guided throughout by my second research question namely:

2. In relation to their experiences of being subjects of public law proceedings, in what ways and to what effect do proceedings-experienced participants talk about ‘childhood’ and ‘child participation’?

6.1 Constructions of Childhood: The Proceedings-experienced Participants

I found that proceedings-experienced participants drew on three distinct but often overlapping discourses, to describe their experiences of being subject to public law proceedings during
childhood. These are the discourses of the ‘Pragmatic Child,’ the ‘In/Audible Child’ and the ‘Care Kid.’

6.1.1 The Pragmatic Child

The discourse of the ‘Pragmatic Child’ predominated in the talk of proceedings-experienced participants who, even after their proceedings were (long) concluded, struggled to make sense of professional practices they felt ignored opportunities to acknowledge them as what they saw themselves to be: reasonable, sensible and realistic about their own capabilities, competence and autonomy and thus capable of participating actively in their own proceedings. In this sense, proceedings-experienced participants actively mobilised the discourse of the ‘Pragmatic Child’ to challenge or resist (albeit often unsuccessfully) professional practices that framed them as unable to participate in ways they wanted to in their own proceedings. In other words, this discourse was recruited to rebuff their own framing through the professional discourse of the ‘Essential Child.’ Paradoxically however, whilst the discourse of the ‘Pragmatic Child’ provided these participants with the space to appreciate and express what they might have otherwise been able to bring to the proceedings, their descriptions of how they attempted to exert agency and participate in their proceedings actually served to reveal how they were excluded from participating. Thus, their descriptions of their attempts to exert agency were perceived to cause tensions across their interactions with professionals because when they tried, those attempts served to merely reinforce or cement their status as children, making their attempts to participate even more difficult.

This first extract is taken from Estelle’s response to my final question where I asked her what advice she would give professionals working with children seeking to participate in their own proceedings, in the future. In responding, Estelle referenced how the attempts she experienced for professionals to block her participation, meant she had to resort to behaviour that she found stressful and tiring, and which she knew, was giving the wrong impression of her. By drawing on the discourse of the ‘Pragmatic Child,’ she re-frames the confrontations she had with professionals as the necessary acts of a reasonable person who was being unjustly treated. In short, mobilizing the discourse of the ‘Pragmatic Child’ allows her to present herself as
someone who was reasonable, plain-spoken and determined to participate and not, as we saw professional participants frame such behaviour in chapter 5, as the actions of a volatile, defiant and emotional child (and thus illustrative of her dependency, vulnerability and need for protection):

**Extract 15: Estelle**

1  ...erm, so I think it is important [...] but you do have to kick off for it. You
2  have to get really stressed for it and I don't think that's fair cos you're
3  in a really stressful situation... and you get judged for it. You just want to
4  be listened to [...] everything I did was done for a reason and it's because
5  you're so... you're so... you're like in a little box ...so, you're like kept
6  pristine in a little box... That's how it feels and it's like ‘no, I don't want to
7  be in a box,... cos I want to be in an open space’.

Estelle describes having to work really hard for her opportunities to participate by resorting to ‘kick[ing] off for it’ (line 1) and ‘get[ting] really stressed for it’ (line 2). By highlighting that she was fighting ‘just [...] to be listened to’ (lines 3-4) implies that Estelle was not asking very much; that her request to participate was extremely reasonable. Thus, by framing those actions through the discourse of the ‘Pragmatic Child’ she re-constitutes her actions, which we can speculate were perceived as uncooperative and challenging by professionals (‘and you get judged for it,’ line 3), as those of a reasonable person pushed to unreasonable lengths. The implication is that as the ‘Pragmatic Child’ she can present what would otherwise be seen as negative behaviour, as a determined but understandable reaction against a powerful authority seeking to unreasonably restrict her. In that sense, she was left with no choice but to ‘kick off’.

In this regard, her description of being kept ‘pristine in a little box’ (line 6) is a very powerful one, with multiple overtones. The idea of being kept ‘pristine’ might relate to her feeling of being artificially suspended in time and space by procedures organized around her and as she waits to speak in Court. Until that time, she feels a captive of her role in a justice system that relies on her custodianship to keep her evidence untainted and clean, which means keeping her well
away from the messy practices of collating and negotiating evidence. Read this way, the paradox facing this child witness becomes clear. However, being kept ‘pristine’ also conjures up the ‘purity’ discourses associated with childhood, which as discussed in chapter 1, make it very challenging to think about childhood as anything other than a time for protection and adult provision of children’s welfare needs. Drawing on Foucault’s notions of power, the ‘little box’ is pertinent as it depicts a world that is boxing her in, containing her and regulating the space in which she can operate, think and speak. It juxtaposes what Estelle says she wants, which is to be ‘in an open space’ (line 7), even if this may be less regulated and less predictable. Again, it is difficult to know for sure whether she is referencing a desire to speak in Court or a desire for more physical freedom, but whatever she means, she implies that the attempts of professionals to keep her pristine end up thwarting her sense of agency and autonomy; this means she in turn feels she has to fight extra hard. Thus, by drawing on the discourse of the ‘Pragmatic Child,’ as someone who ‘just want[s] to be listened to,’ she calls out these constraining practices as unreasonable interferences with her reasonable and sensible desire to exercise autonomy over decisions that relate to her.

This next extract is drawn from my interview with Hope, where she is responding to my final question about the advice she might give professionals when faced with a child who wanted to participate in their proceedings beyond giving ‘wishes and feelings’ to her proxy representative. Here, Hope references the practices of professionals who, as we saw in chapter 5, go to significant lengths to avoid speaking to children for the fear of re-traumatising them. Instead, by presenting herself as an expert in trauma, Hope highlights the naivety of such practices: trying to protect her from something she has already experienced. In that regard, she points to her experiences as making her more knowledgeable about her trauma than they are:

### Extract 16: Hope

1. At the moment they’re coming from this kind of ‘we must never let them know that we know. They must never talk about it. We must never bring it up… because it just traumatises them’ and you think ‘No! I live with it every day.’ You can talk about it as much as you want. I live with it every
Pertinently, what Hope reminds us about is that if children speak, (‘I will tell you when you are traumatizing me,’ line 5), professionals may have to listen and take account of the views children express in relation to their own welfare, traditionally the domain of the care professionals. She achieves this by implicitly, mobilising repertoires around competence and agency to emphasise two important tenets implicit in the discourse of the ‘Pragmatic Child’. The first is that children who have first-hand experience of trauma are experts of their own trauma. The second is that children will communicate re-traumatising events caused by their participation to professionals and thus collaborate in their own protection. Seen in this light, what Hope presents from her perspective is a simple, straight-forward, practical and sensible solution to her predicament. Instead of avoiding discussions about her experiences, ‘You can talk about it as much as you want, I live with it every single day. I will tell you when you are traumatising me’, (lines 4-5).

From the position of the ‘Pragmatic Child,’ Hope presents professional practices focused solely on protection as unhelpful to children. In this regard, setting up a polarity of ‘them’ (lines 1-3) and ‘us’ (lines 3-6) through the use of direct speech is a helpful device. This is because it emphasizes the dissonance that can exist between theorizing about, idealising or double-guessing children’s experiences (that is, the practice motivations that are implied in lines 1-3) and actually engaging with children and their experiences (the direct response from the pragmatic child expressed in lines 3-6).

So, taking up the position of the ‘Pragmatic Child’ serves to demonstrate how the taken-for-granted idea that ‘They must never talk about it’ (line 2) starts to unravel. Understood from Hope’s perspective, listening to children about trauma involves relinquishing the ideal of the ‘Essential Child’ who is innocent (‘we must never let them know that we know’ line 2) and vulnerable (‘We must never bring it up… because it just traumatises them’ lines 3-4). What Hope reflects on here is the paradox, which was discussed in chapter 5, where professionals
feel unsettled in their professional practice, challenged and even fearful of the prospect of children speaking about their experiences. Indeed, we saw in that chapter how professionals expressed feeling undermined or powerless to meaningfully protect children who speak. Thus, whilst Hope draws attention to alternative ways of practicing child participation, she also highlights the reality for children, which is that all the time professionals practice welfare-through-protection, children will not be able to effectively participate because they will remain silenced by the risk of being re-traumatised.

The same paradox (children speaking about their experiences being concerning for professionals) operates across this next extract, which is taken from my interview with Kemi who is responding to my question about how it felt for a Judge to be making decisions about his future in his absence. Here, Kemi expresses how his attempts to display his agency and independence were thwarted as displays of childish behaviour. He voices his frustration and annoyance at being framed by professionals as being vulnerable and dependent (a 'big baby') by drawing on repertoires of agency and autonomy as the ‘Pragmatic Child.’ As such, this discourse serves to provide the platform from which he challenges his experiences of professional discourse that framed him in limiting ways, where it was only possible for him to participate by giving his ‘wishes and feelings’:

Extract 17: Kemi

1 Powerless. Annoyed. Very frustrating and pissed off too because I think…
2 I kept thinking ‘It’s my life. It’s my brain. It’s my body. I decide for myself
3 what I want to do. I decide what I’m gonna become. I decide where I
4 wanna go. I decide everything. I know I’m not 18. I know I’m not and that
5 the Law in this country means I’ve gotta be 18 to be able to do whatever
6 you want. I understand people were brought up differently when they were
7 little…like I was brought up… straight on I was independent. So, I used to
8 do it all …independent. I used to go out all the time…independent… So,
9 when I tell them this, they think I’m a big baby and just take the mick out of
10 me and say ‘yes, yes, but you knew nothing else’.
Kemi draws on the discourse of the ‘Pragmatic Child’ to present himself in a very complex way. Primarily, he presents himself as someone who knows his own mind (‘It’s my life. It’s my brain. It’s my body,’ line 2) and thus as someone who is reasonably entitled to question how professionals reached contradictory views about him. Consequently, he foregrounds his personal experiences as reasonable claims to independence and autonomy. However, Kemi also presents himself as someone who knows the boundaries to his legal status as a child: ‘I know I’m not 18. I know I’m not and that the law in this country means I’ve gotta be 18 to be able to do whatever you want,’ (lines 4-6). In this sense he is directly challenging the perceptions he describes professionals had of him as a ‘big baby’ (line 9) by foregrounding his ambiguity: that he can be simultaneously a child but behave like an adult: not being 18 but still knowing his mind.

Paradoxically however, his declarations about his independence are exactly those, it appears, that limited his agency and autonomy when it came to his own proceedings. It seems his claims to early independence merely illustrated the opposite, namely his degree of vulnerability, inherent in professionals calling him the ‘big baby’ (line 9). In common with Estelle (see extract 15 above), Kemi recruits the discourse of the ‘Pragmatic Child’ to re-frame behaviour for which he felt unfairly judged and humiliated (‘they […] just take the mick out of me,’ line 9). Indeed, it is those same dominant discourses around age and normative childhood experiences (lines 4-5) that make it impossible for others to acknowledge him ambiguously as a child who acts like an adult. Simultaneously these practices perfidiously de-value Kemi’s experience to that of a child and moreover, re-write them through the lens of difference. Thus, instead of being hailed as someone expounding important and significant beliefs about the world and himself, he feels that these discourses make it possible for professionals to talk down his experiences as those of someone who ‘knew nothing else’ (line 10). To them, he is not knowledgeable and autonomous but just a child acting like a ‘big baby’.

Discussion
The discourse of the ‘Pragmatic Child’ made it possible for proceedings-experienced participants to frame and assert the importance of repertoires of voice, competence or agency, to their sense of self. In that regard, the ‘Pragmatic Child’ was a helpful discourse as it provided the platform from which to express and emphasise the reasonableness and good sense of their claims and experiences, albeit here in a post-hoc way. Understood this way, their claims to be treated fairly so as to just be heard, appear difficult to gainsay.

Importantly, the discourse of the ‘Pragmatic Child’ provided a vantage point from which to try to resist and perhaps more successfully problematise the influence of the ‘Essential Child’ by re-framing childhood in more contradictory and ambiguous ways that do not axiomatically associate childhood with protection and deficit, and thereby render children powerless and voiceless. Thus, the discourse of the ‘Pragmatic Child’ works as a counter discourse to that of the ‘Essential Child’. Firstly, it serves to highlight the fair-minded expectations these proceedings-experienced participants articulate that they had around their own experiences of participation (They ‘just want to be listened to’ (Estelle) or ‘you can talk about it as much as you want’ (Hope)). From the perspective of the ‘Pragmatic Child,’ their views are based on realistic or reasonable expectations. Secondly, the discourse of the ‘Pragmatic Child’ serves to highlight the more powerful and perfidious influence of the ‘Essential Child’ discourse that has children going to such lengths just to be heard, or seen, while still dominating decision making in the end.

However, despite the belief each of the proceedings-experienced participants invested in this discourse, the wish to participate that it was based on, was seldom one that was fulfilled. Countering the effects of pastoral practice was simply too much for proceedings-experienced participants to achieve. In that regard, the discourse of the ‘Pragmatic Child’ was recruited to express the significant personal cost of not being heard through their frustration, resignation and disappointment, which for some, has endured significantly beyond the experiences of which they spoke here. These are issues to which I return in chapter 7.

6.1.2 The In/Audible Child
By contrast to the discourse of the ‘Pragmatic Child’, the discourse of the ‘In/Audible Child,’ which also draws on repertoires around the child’s voice and agency, captures how proceedings-experienced participants make sense of the purpose, utility or value professionals ascribe to children’s attempts to speak out about their experiences. It is different to the discourse of the ‘Pragmatic Child’ in that this discourse also draws explicitly on repertoires around listening to children. In this sense, what these participants were expressing was an awareness of being caught up in practices where children’s voices are amplified only for certain reasons, those being when speaking out bolsters the professional case for enhanced protection. This was what proceedings-experienced participants understood that professionals could hear. Importantly, however, these participants also felt that what professionals heard, was made use of in ways that could be negative or detrimental to them personally. In that regard, proceedings-experienced participants expressed ongoing frustrations and anger about their framing as the ‘In/Audible Child’ as reinforcing their standing in relation to professionals who they felt retained the status of expert when it came to deciding when children might speak out. There was only one occasion across my data, which I include in this section, where a proceedings-experienced participant felt being the ‘Audible Child’ was beneficial and that was when she was able to participate in her own proceedings in ways she perceived as meaningful to her as she gave evidence in Court, and instructed her legal team to advance her case on her behalf. The implication of this discourse is that children who wish to participate, discern their experience as meaningful or not, in terms of the levels of personal autonomy they feel they have in relation to what they might say or indeed be heard to say and the circumstances in which they might speak and be heard to speak.

The first extract in this section begins with Estelle providing an account of how she came to make allegations about her step-father. On the day in question, the social workers were in attendance at the home Estelle shared with her mother and her much younger half-siblings, for the purpose of implementing interim care Orders for all three children. The plans were for Estelle to be removed into foster care, if she agreed, and for her younger half-siblings to move to their paternal grandparents. In the context of the implementation of those plans, Estelle describes how her concern to protect her half-siblings from being placed in an environment that
she knew to be harmful, (because it would bring them into contact with their father, her step-father, who she knew from personal experience to be abusive) caused a shift in how professionals related to her. Co-incidently then, by speaking out about her siblings’ protection, she realizes she inadvertently drew attention to the value she brings to the proceedings. She has become first and foremost an important asset in securing her siblings’ protection and accordingly, one to be protected and preserved:

Extract 18: Estelle

I made erm,… allegations erm, as to why, you know? Right? I weren’t being mad. There was a reason why she [a half-sibling] couldn’t go there. Erm, and they turned round to me and they said ‘because of the allegations you need to come with us, otherwise we will leave you here’ they said ‘but because you’ve made these allegations, it’s not going to stand up in Court unless you come with us, erm,… but you’re [sic] only be in care for about 2 or 3 days and then, you know, we can bring you back to your mum. But it’s only so you don’t confer with each other and they don’t say ‘your mum’s coerced ya.’ So, I was like ‘OK’… and I was in care for nigh on 2 years. I never went back. They wouldn’t let me go back. So, they lied to me, like,… that day… and I was absolutely fuming with them. But there was nothing I could do once I had been taken away… once I had agreed to go. In effect they had me hook, line and sinker. There was literally nothing I could do. I was anchored

(laughing).

The discourse of the ‘In/Audible Child’ is implicit throughout this extract in how Estelle describes her in/capacity to act agentically. Importantly, those shifts in how Estelle understands her ability to act agentically are contingent on how professionals re-frame what ‘protection’ means. For instance, it is implied in the reported speech ‘otherwise we will leave you here’ (line 4) that had Estelle not made the allegations she would have been able to act rather more autonomously and decide for herself as to whether to move into foster care. Similarly, once she had made the
allegations, she describes being ‘had … hook, line and sinker’ (lines 12-13), suggesting that the grip professionals had over her (or at least over what she had to say) was total.

The shifts in how professionals frame ‘protection’ also mark an important shift for Estelle in how she understands professionals frame her and her utility to any Court proceedings. In this regard, Estelle recognizes that by taking responsibility and speaking out to facilitate the protection her siblings require, she has amplified what she has to say and potentially altered her status within the proceedings. Thus, whereas before she talked, Estelle describes a professional ambivalence towards her removal and indeed any view she might express about her circumstances, that changes when she speaks about protection. Preserving the information required to protect, changes professional priorities so that ‘you need to come with us’ (lines 3-4). Now, staying behind puts the evidence that is key for her siblings’ protection in jeopardy as it compromises Estelle’s ability to present as a reliable witness (‘so you don’t confer with each other and they don’t say your mum’s coerced ya,’ line 8).

Paradoxically then, transitioning from the ‘Inaudible Child’ to the ‘Audible Child’ is contingent on her relinquishing her agency and submitting to the requirements of the professionals that stipulate that in order to protect Estelle’s siblings, they must protect what Estelle has to say. In other words, to be heard, Estelle has to submit to high levels of protection herself; levels that were not explained to her on the day. Feeling ‘lied to’ (line 10) by professionals implies that she was naïve to trust them when she should have known better (lines 11-14). The nautical imagery serves to emphasise her sense of feeling trapped at the time by the responsibility of protecting her siblings, which she associates with being naively tricked into doing the job of the professionals, rather than considering her own priorities. Importantly, being ‘anchored’ (line 13) suggests that protecting her siblings came at the cost of her own freedom and agency: thus, revealing a passivity associated with her positioning as the ‘In/Audible Child’ because in all other respects she remains unable to be heard, to change her own circumstances, or to question decisions that are made. The implication is that whilst it might seem that the voice of the ‘In/Audible Child’ is amplified, the reality is that by only permitting it to be turned up to the extent required to support professional practice, it is not beneficial to Estelle as such. She is
not audible in ways that primarily benefit her, but by speaking, benefit the case to protect her siblings.

Later on in the same interview, Estelle drew on the discourse of the ‘In/Audible Child’ again, in order to stress the wider systemic as well as personal benefits that arise from children being witnesses. In that sense she was focused on that brief period of time when she felt her voice was fully amplified or in other words, turned up to a level that was beneficial to her, no matter whether it benefitted the professionals as well (or not). This next extract comes from that discussion where Estelle is responding to my final question, which was for her, if possible, to offer any advice to professionals related to her experiences of child participation:

Extract 19: Estelle

1. That was important, to get the child’s perspective… to get that from a child
2. in the house who was a victim that had to go through obviously what I
3. went through… I think for a child to have that day when they can say
4. … you know, when they can tell everyone, … I think that’s important. Erm,…
5. and it has stayed with me for the rest of my life because I really
6. appreciated having that chance … cos there was a time when I wasn’t
7. gonna get it.

Despite the very ephemeral quality of any participation as a witness, it is an experience that is particularly poignant for Estelle, not only because she had to struggle so hard for it (lines 6-7), but because it marked out the one occasion where she felt heard (line 3): she was there and what she said was heard without a filter. Interestingly, when speaking about her experiences as a witness, she reveals the double amplification to her voice as the ‘Audible Child’: she had the chance to ‘tell everyone’ (line 4) about her experiences at the time, which she now has the chance to remind everyone was ‘important’ (lines 1 and 4) from a distance. Implicitly, by reminding us of the very privileged position she held in her own proceedings (‘I really appreciated having that chance,’ (lines 5-6), she reminds us that many children never have the
opportunity to turn up the volume on what they have to say in a way where children can be heard.

This extract marks an important but significant shift, in the meaning of the ‘In/Audible Child’ discourse, because it is mobilised here to show how participating as a witness has made a positive and permanent mark on her. In contrast to the previous extract, Estelle draws on this discourse to emphasise that despite her previous, and largely unsuccessful and unfulfilling experiences of participation, having this ‘chance’ (line 6) fixed it all. Understood this way, this extract highlights how this discourse lends itself to repertoires of empowerment through voice, as Estelle makes explicit that speaking directly in Court helped, in a sense, deal with her more negative experiences as both a ‘victim’ (line 2) and someone who felt trapped in foster care.

For other proceedings-experienced participants, the discourse of the ‘In/Audible Child’ was recruited to highlight how they perceived professionals used what children say to bolster their plans to protect children in ways that amplified children’s voices in meetings without resulting in opportunities to speak in Court. Pertinently, those participants mobilized the discourse of the ‘In/Audible Child’ as individuals who only participated in their proceedings by speaking to professionals. One such example comes from my interview with Vicki. In responding to my question about the weight she felt was placed on her views in meetings with professionals, Vicki shares her memories of the moment she became aware of a shift in the value her self-reporting about her home circumstances had for her social worker. As she observes across this next extract, the shift in amplification of her accounts coincided with independent observations professionals made about her mother’s behaviour. What is painfully clear from this extract is how speaking out for so long about her worries about her safety has had devastating consequences for her as nothing was done for so long to help her:

**Extract 20: Vicki**

1. It ruined my whole life really. I wasn’t listened to about how bad things
2. were, really… through the whole of the Court case… It was only when
3. I think my mum started having proper breakdowns and they saw her
behaviour was strange (laughing) that they started to… my social worker
always says… She was wondering like, ‘I’m going to listen to Vicki’ and
she came back to me… for the first time… you know? She had talked to
me many times but it was almost like she had come to talk to me for the
first time. And that’s when it started kicking off again… it was like
everything was taken with a pinch of salt and there was just a different
air to it. I can’t describe it but I remember it happening and… it was like
she asked me again what she had asked me before but this time she
noted it.

Mobilizing repertoires around listening, that are so inherent to the discourse of the ‘In/Audible
Child,’ serves to provide a platform for Vicki to highlight the very moment she felt heard: ‘she
came back to me … for the first time … you know?’ (line 6). In this regard, Vicki also marks the
point where there was potential for her move from the position of the Inaudible Child to the
‘Audible Child’. This did not involve her saying anything new: she is explicit that what she was
speaking about again and again (‘through the whole of the Court case,’ line 2) was ‘how bad
things were…’ (lines 1-2). However, whereas what she said was normally ‘taken with a pinch
of salt’ (line 9), now ‘there was just a different air to it’ (line 9-10). Interestingly, the link that is
explicitly made between the amplification professionals gave her voice and it ‘kicking off again’
(line 8) gives at least a perception that Vicki’s concerns about her own welfare were heard.
However, it is more likely that this shift in approach is not galvanized by a review of Vicki’s
reporting, but by observations professionals made about her mother’s erratic behaviour, to
which Vicki’s experiences can now be seen to lend weight (lines 3-4). To that extent, what is
amplified is the value her experiences bring to the protection-focused action professionals can
take now they have independent observations.

What remains problematic, however, is that before this moment, nothing she reported was
‘turned up’. This reflects concerns across the academic literature, which as discussed in
chapter 2 mean that the legal, structural and contextual boundaries that determine what
professionals feel they can hear a child say, and what they feel they can and should do as a
consequence (Motzkau & Lee, in press). What Vicki highlights is that speaking as a child is never enough to ensure protection: professionals have to be able to hear what children say. For Vicki, being caught in this paradox of speaking but not being heard ‘ruined my whole life really’ (line 1).

Importantly then, what Vicki’s account reveals is that children can feel as if it is not worth speaking at all because what children have to say only becomes amplified in limited circumstances, contingent on gaining the attention of professionals in ways that help them to act. Key for Vicki is that her real and legitimate concerns for her protection were insufficient to save her in time. Her word was not enough and that still causes her pain and resentment. Thus, drawing on the discourse of the ‘In/Audible Child,’ helped Vicki to make sense of being heard only when professionals could act on what she said and not because she felt acknowledged as a competent, trustworthy or expert narrator of her own experiences.

Discussion
The ‘In/Audible Child’ is a discourse proceedings-experienced participants drew on to make sense of the utility or value they have to a system focused on protection. In this respect, these participants drew on repertoires around the child’s voice, agency and listening to describe times when what they said was amplified and thereby distinguished from times when they felt unheard (inaudible). As each of these examples highlights then, speaking out is much more complex and relational: that what children say, only works in relation to the system that is prepared and able to listen. In that regard, the context to which they can speak is key, as it needs to empower professionals to act. Indeed, by associating the amplification of their voice with a shift in professional practice suggests these participants have a keen understanding of these processes in action and the consequences these practices hold for them as children who wish to both participate and be protected.

It is also important to note that whilst the amplification of the child’s voice could be beneficial, for example, Estelle having her chance to speak in Court where ‘everyone’ was listening, speaking can also come at a significant cost. For Estelle this involved spending two years in
foster care, whereas Vicki did not spend enough time in foster care. Consequently, these participants express speaking as something that has brought no satisfaction or sense of agency. It is likely that these damaging experiences are not rare, given the primary function of public law proceedings is to organize children’s protection and to do so, hierarchically. In that regard, and whilst I focus specifically on the affect of participation in chapter 7, it is evident that speaking out can result in anger and frustration, resignation and disbelief about a system that can so readily use what children say to its own ends, but otherwise disregard their views and experiences when it does not have an immediate need for them. In Estelle’s case, she described feeling ‘anchored’ to a version of her life she did not choose, which was being kept in foster care for two years rather than the 2 days she was promised. For Vicki, the consequences of being ignored, continued to negatively affect her, thus highlighting the profound effect speaking out can have for participants’ self-confidence and identity.

6.1.3 The Care Kid

Finally, I found that the proceedings-experienced participants used the discourse of the ‘Care Kid,’ to emphasise how they felt singled out or ‘othered’ by virtue of their status as children subject to care proceedings. As discussed in chapter 1, as a process, ‘othering’ (inadvertently) marks out those who are constructed as different to the norm and how people construct their identities in relation to others as a result (Weis, 1995). Thus, the position of ‘Care Kid’ was understood to denote their difference in relation to other ‘normal’ children that resulted because of their public law proceedings. In this regard, their perceived deficit or difference in relation to ‘normal’ children can be linked to the discourse of the ‘Care Proceedings Child’ used by professional participants and discussed in chapter 5.1.2. The ‘Care Proceedings Child’ was a discourse I found produced professional practices that mandate and reinforce the levels of enhanced protection that are afforded to children whose life experiences are deemed harmful. This professional discourse is associated with the ‘Essential Child’ discourse that defines childhood through aspiring qualities such as innocence and normal development. In that sense, these children experience a double bind because they are being compared to an ideal that does not exist but moreover, one that is made all the more difficult to attain, given they are perceived as operating on the margins of childhood by virtue of their need for ultra-protection.
Pertinently, but perhaps unsurprisingly, all proceedings-experienced participants expressed the damaging consequences of being positioned as the ‘Care Kid,’ who is assumed to need enhanced or ultra-protection. Importantly, these participants spoke about how decisions that were made to preserve their perceived need for enhanced protection severely restricted or expunged their opportunities to participate in decisions relating to many aspects of their lives. Paradoxically, these participants demonstrate how rather than enhancing welfare, being positioned through the discourse of the ‘Care Kid’ is detrimental to their welfare. As I shall also demonstrate, it seemed not to matter whether a child had supported or resisted the plans to remove them into care; their experiences of being subject to the ‘Care Kid’ discourses remained very similar.

This first extract is taken from the early stages of my interview with Vicki where in responding to my initial question, which asked for her thoughts about children being involved in their own proceedings, Vicki introduced experiences from her own proceedings as a child who wanted to go into care. Here, she talks about how much she disliked the arrangements professionals made for her to see her father in a contact centre during her care proceedings. Whilst appreciating the need for protection, she perceived those arrangements as unfair as paradoxically they singled her out so much, as not being normal, that they were un-protective. They reinforced how different her family life was to what other children might have. At the same time, she takes issue with professionals assuring her she is normal, when she is keen to highlight that clearly she is not like anyone else in her peer group. Importantly, Vicki’s talk demonstrates how the acquired identity of ‘Care Kid’ operated so as to position her as different to other ‘normal’ children and other ‘Care Kids’.

**Extract 21: Vicki**

1. We wasn’t [sic] allowed because of the Court case, like we had to do it
2. in the contact centre. Everything was from the contact centre, which was
3. …a bit rubbish. At the time you do understand why, but at the same time
4. everything feels unfair, … because you’re not normal when you’re a kid in
care and you always say, 'I just want to be normal', nobody seems to get it,
like 'you are normal bla, bla, bla'. 'I'm not normal!!!!'[...] You are so
different from everyone else in your peer group, you know? That's why
it's a really difficult thing [...] It's like a status 'what Court Order are you
on?' 'oh, voluntary'; 'oh, interim'; 'oh, full care order' huh! 'I'm the bad
boy!' You know? (laughing)

Integral to the discourse of the 'Care Kid' is the repertoire of difference: that 'Care Kids' are
different to 'normal' children. Understood in that way, what Vicki is voicing here is her need to
be accepted and treated for who she is; a 'Care Kid.' By extension, she is pleading to not be
treated as a normal kid. Using direct speech to and from an imagined professional ('you always
say, 'I just want to be normal', nobody seems to get it, like 'you are normal bla, bla, bla,'" lines
5-6), is a helpful strategy here to demonstrate how deeply she was affected by the attempts of
professionals to re-frame her difference as normal. This strategy perhaps also demonstrates
the pernicious nature of disciplinary power whereby denying Vicki's difference serves to invite
her to replicate the characteristics of the 'Essential Child', when this is just precisely what she
cannot do. Indeed, the 'Care Kid' seems to operate as an identity that is so integral to her
functioning that its very denial serves to reinforce it ('I'm not normal,' line 6). Thus, whilst these
practices might allow professionals to believe that Vicki's needs are being met, through that
narrow lens of protection (after all, she is being properly cared for by being protected), from
Vicki's perspective, being rescued and being protected is only part of the story. For her, the
very processes by which she became a 'Care Kid' have ruptured the ways she relates to family
and peers. Thus, whilst Vicki seems acutely aware of how, through a sequence of legal orders
(lines 8-10), the position of 'Care Kid' reinforces her status as both vulnerable and a child, by
positioning her squarely within protection-based repertoires ('you do understand why,' line 3)
she is equally clear that the protection-focused practices to which she is subjected have
become extreme ('at the same time everything feels unfair,' lines 3-4). The implication is that
it is precisely this dominant response or urge to protect that informs her exceptional treatment,
like seeing her father only 'from the contact centre' (line 2), that simultaneously reinforces her
family relations as 'a bit rubbish' (line 3), sets her apart and traps her as different.
Interestingly then, Vicki’s reflections of being a ‘Care Kid’ do not accord with those professional aspirations, that equate removing a child into care and ameliorating the risks of further harm, with normalising their experiences. Instead, she speaks about ‘the Court case’ (line 1) as achieving the opposite: as setting her apart by singling her out as having different experiences from those that pepper normal childhoods (‘when you’re a kid in care and you always say, ‘I just want to be normal”, lines 4-5). For her, living with the status of the full Care Order positions her as ‘the bad boy’ (lines 9-10), whether she likes it or not. Understood this way, her cry ‘I’m not normal!!!!’ (line 6) is doubly powerful because it both recognizes the sustained and considerable cost of being a ‘Care Kid’ and calls out the attempts of others who, whilst treating her differently, deny they are doing this in what she perceives as ill considered attempts to placate her (justifiable) anxiety. Paradoxically then, her desire to be accepted and treated as the person she is, is the one outcome that she feels will always elude her. In this sense, trying to make her feel better achieves the opposite.

This next extract is taken from early on in my interview with Hope, who like Vicki, as a child supported the actions of her Local Authority to remove her into care. When I asked Hope about her views on child participation, in common with Vicki, she also responded by speaking about what it was like going through her own care proceedings and specifically the difficulties she, (and she believed other children), had in making sense of their proceedings and the events that led up to them. In responding to my follow-up question about what difference it might have made to talk freely with professionals about the experiences that brought them (meaning her and others) into care, Hope highlights how, speaking to professionals about those events might have helped her prepare for leaving care. This is because whilst it is easy to explain things away by reverting to the ‘Care Kid’ identity she ultimately, and in hindsight, perceives it to be a status that trapped her as she found it hard to relate to the outside world at 18:

**Extract 22: Hope**

1. So, you have all this stuff and you know it and it’s sitting inside you […]
2. You’ve blamed yourself about things… You don’t understand that
your behaviour is informed by this trauma. You think you’re just a bad kid or whatever, … so you create this identity. We say ‘well, I’m a care kid, innit?’ And then of course ‘I’m not going to school’ or of course, ‘I’m not doing this’ or ‘I’m not doing that’ … and your whole identity is about being a care kid… and so when you’re 18 and you stop being a care kid and you’ve got to leave and […] be a normal person in society, you don’t know what that is. You have no idea how to behave as a non-care kid does in any shape or form and that’s because they’ve allowed you to create this identity.

Importantly, this extract highlights the paradox in how Hope’s experiences of the discourse of the ‘Care Kid’ functioned to re-inforce her position outside of what she imagines are normal experiences of childhood, rather than to normalize her situation. In this sense, she joined a pseudo-protective bubble where ‘normal’ had its own meaning. As such, her pseudo-environment was not conducive to preparing her for what was perceived as normal elsewhere. In that sense, this bubble or new normal was un-protective. This is not an isolated experience but one she believes she shares with many. Thus, when she draws on the collective ‘we’ (line 4) Hope recruits herself into a group with whom she shares common experiences. The common experiences to which she refers are the protective processes that function to normalize behaviour that outside of the status of ‘Care Kid’ is perceived as problematic (‘you have no idea how to behave as a non-care kid,’ line 9). This suggests that the ‘Care Kid’ identity is an unhelpful one because it does not actually protect those whose behaviour is still ‘informed by this trauma’ (line 3). The implication is that the ‘Care Kid’ is constantly defined by that trauma and in this sense, trapped and unable to move on. Thus, whereas the mantra ‘well, I’m a care kid, innit’ (lines 4-5) worked extremely well as a justification for her behaviour at the time, in hindsight, she frames it as an identity that set her up as ill-prepared to integrate into society. In this regard, the ‘Care Kid’ identity places children at a double disadvantage as it perpetuates their stigmatization into adulthood by ‘allow[ing] you to create this identity’ (line 10). So, rather than achieve the protection they hoped for by not allowing children to talk about or report on their traumatic experiences, proceedings-experienced participants describe a process whereby they feel abandoned within their pseudo-protective bubble, trapped within the self-perpetuating
discourse of being a ‘Care Kid,’ until their expulsion at 18, when the status as ‘Care Kid’ and the statutory need for protection just fall away, leaving them stranded without the tools to relate to the ‘normal’ world they are now meant to be equipped to occupy.

Discussion
In stark contrast to the professional discourse of the ‘Care Proceedings Child’, which functioned to justify ultra-protective practices of pastoral power, the ‘Care Kid’ discourse demonstrates the inherently harmful and stigmatising effects of those practices for the children subjected to them. For those participants, the ‘Care Kid’ discourse provided a platform to both make sense of and problematize the practices that trap them in a pseudo-protective bubble, from which it is difficult to escape, or indeed to even know to escape. Pertinently for these participants, being the ‘Care Kid’ meant they could be singled out for high levels of intervention and protection; experiences that were perceived as ultimately damaging for them. Thus, whilst being trapped with this status of ‘Care Kid’ might serve some short-term benefit such as giving them a special dispensation for bad behaviour, these participants described being unable to move on easily. This is because being the ‘Care Kid’ simultaneously set them up for real life experiences that materially set them apart from their peers. Examples of this include where participants described seeing their parents in a contact centre, or using a different vocabulary to distinguish their legal status (Vicki) and indeed, perpetuating impressions about themselves that were difficult to disrupt (Vicki and Hope). In that regard the identity of the ‘Care Kid’ was perceived as leaving children ill-equipped to cope with or relate to ‘normal’ life and merely served to reinforce their difference into adulthood. In that sense, being the ‘Care Kid’ was ultimately very damaging indeed.

6.2 Constructions of Child Participation: The Proceedings-experienced Participants
In this section I focus on the ways proceedings-experienced participants constructed child participation in the context of our discussions about their experiences in their own public law proceedings. In chapter 2, I argued that research suggests that hegemonic discourses around which welfare policy and practice are framed are so imbued with ideas about protection and safeguarding that they produce axiomatic practices that are difficult to challenge (Bainham, 2013; Burman, 2017). We saw in chapter 5, for instance, how those ideas produced versions
of child participation over which children could exercise little or no power, control or responsibility; one that ultimately was an illusion. Accordingly, very little space was perceived to exist for thinking or indeed focusing on practices related to child participation that went beyond professional participation.

As we shall see across this section in contrast to professional participants, proceedings-experienced participants spoke about participation in ways that were much more focused around an understanding and expectation of participation as something beneficial to them. From this perspective, the views and experiences of these participants were framed as important in their own right, separately but linked to beliefs about their welfare-through-protection. What proceedings-experienced participants highlighted as fundamental to a version of participation that was meaningful to them, was something more than the mere act of speaking; it was a more relational and interactive version of participation where they felt both informed and listened to. Importantly, this version of participation was not expressed as being contingent on getting their own way, , thus dispelling the fears we encountered in chapter 5, that professionals associated with children speaking. Instead, this version of meaningful participation was contingent on whether proceedings-experienced participants felt they could speak freely and that when they did, their views were taken seriously/heard. Even when outcomes did not reflect their views, what they expressed as key was that the decision-makers acknowledged their views and accounted for those views in the decisions they took in relation to planning for them. Inherent in this version of participation is the strong belief that being informed and listened to is not a lot to ask. With those observations in mind, I found the following prominent discourses in the talk of proceedings-experienced participants: ‘Participation-as-Marginalising,’ ‘Making my Participation about Me’ and ‘Welfare-through-Participation.’

6.2.1 Participation-as-Marginalising

The discourse of ‘Participation-as-Marginalising’ draws on repertoires of voice, agency and listening to target some versions of child participation as problematic because they are practices that do not achieve what these participants perceived as meaningful participation. As such, what becomes key is how some versions of child participation were framed as being at
odds with participation as an opportunity of speaking as an informed person who will be listened to. Implicit in the discourse of ‘Participation-as-Marginalising’ was an awareness that all active elements of participation, such as being informed, being heard and speaking had become so sanitized and streamlined, so as to be non-existent. Thus, whilst these participants spoke about experiences that they felt constituted some version of participation, they were not a version of participation that proceedings-experienced participants felt to be helpful or empowering. Rather, they served to keep them on the periphery of their own proceedings. In that sense, what these participants were describing was the effect of being caught up in practices produced by the professional discourses ‘Participation-as-an-Illusion’ and ‘Participation-as-Formulaic’ discussed in chapter 5 as what ‘Participation-as-Marginalising’ does, is reveal how it is to participate in an illusory or formulaic way and the effect of that.

This first extract comes from my interview with Vicki and from a point in our interview, where we are discussing the purpose of participation when children do not feel sufficiently informed about their proceedings to be able to contribute to the decision-making. Here, Vicki is responding to my follow up question; what if they are not telling you [about the proceedings] because they think it is right not to tell you? I asked this question, as I was aware from both my review of the academic literature and my own experiences in practice as a lawyer, that in child protection there was a belief that shielding children from events that might re-traumatise them. In rejecting that notion entirely, Vicki described how upsetting it can be to be ignored as for her it felt like being engulfed by a shadow:

**Extract 24: Vicki**

1 If anyone had explained instead of… you know, … you feel like you are in a shadow, just being ignored. You want to explain… you want to know
2 something… if you’re going to make sense of anything that would have helped I think, a lot

By drawing on repertoires of autonomy, Vicki positions herself as someone who needs to be informed through her participation in order to develop the capacity to be her own person.
is her modest expectation and it is not a lot to ask given how fundamental being informed is to being able to ‘want to explain…,’ (line 2) and ‘make sense of anything’ (line 3). After all, these are actions most people just take-for-granted. What mobilises the discourse of ‘Participation-as-Marginalising’ here is the apparent impossibility of reconciling her expectation that things would be ‘explained’ or made known (lines 1 and 3) with her experience of being ‘ignored’ (line 2). She implicitly contrasts her experiences of participation with the assumptions professionals make about practices where, as discussed in chapter 5, they shield children from discussions about their childhood experiences to avoid the risk of re-traumatising them. What this extract highlights however is that whilst professionals think shielding children from information is an action that foregrounds children’s protection, it is clear that Vicki perceives withholding information as ignoring her. Perceived this way, these professional practices are framed as calculating and deliberate. Consequently, we see how children do not escape trauma because feeling deliberately ignored is in itself traumatizing.

Whilst no doubt acting with the best intentions, the decisions professionals take to withhold information from Vicki during the course of her public law proceedings are described here as having significant consequences. Importantly, her lack of access to information left Vicki unable to make sense of her circumstances (‘If anyone had explained instead of…’ line 1; ‘if you’re going to make sense of anything that would have helped’ lines 3-4). In that regard, the use of the idiom of feeling ‘in a shadow’ (lines 1-2) is revealing as it conjures up a powerful image of the fear or anxiety of not being able to see clearly, or at all. In that regard, manifesting between ‘want[ing] to explain,’ and ‘want[ing] to know,’ but ‘just being ignored’ (line 2) is the full force of the effect of the discourse of marginalization. Read this way, what Vicki describes is the fear or anxiety created, paradoxically from feeling deliberately excluded and thus from knowing and seeing what is going on. She feels ignorant, unimportant and left in the shadows. As is implied in her words ‘if anyone had of explained instead of …’ (line 1), was not a lot to ask, which suggests she feels the consequences of her marginalisation could have been easily avoided.

One of the ways Kaya participated in her own proceedings was by attending a Judge’s Meeting with Children alongside her Solicitor and Guardian. This next extract is taken from that part of
our interview, where she is responding to my question about what she thought was important about going to see the Judge and Courtroom. Kaya responded by swaying back and forth in her talk, comparing her expectations of seeing the Judge and the Court with the reality of her experience. On the one hand, she was curious to actually experience being in a Courtroom and see the Judge and on the other, she was concerned that the actual experience had left her baffled and confused, thus contributing to her sense of marginalization from her proceedings:

Extract 25: Kaya

1 Kaya: They did show me around going ‘here is here and there
2 is there’ and ‘this is where your mum will be standing’
3 and ‘here’s where the other people will be standing…
4 taking notes and things.’
5 Sara: Were you interested to hear all of that?
6 Kaya: Yeah. It was just like… it was a Judge’s room, but it all
7 just didn’t look like that. They had all the things they
8 needed in there, but it didn’t look like that. They had
9 the objects that they needed already in there […] she
10 just asked me about my holiday, and she asked me if I
11 was OK, and stuff. She asked me if I thought it would
12 be like this. And she told me ‘it doesn’t look like… it’s
13 not like how you imagined it to be’.
14 Sara: But did it help you picture things better?
15 Kaya: Yeah. It’s just like you being in a Court but it’s just so [sic]
16 smaller. And things are kind of… changed around and
17 you don’t know exactly how it is.

Kaya expresses dissatisfaction with her experience of participating in the Judge’s Meeting in two ways. Firstly, she makes explicit that very real dissonance that exists for her between the reality of her visit to the Courtroom and her expectations. Notably, she creates ambiguous but powerful images to depict the Courtroom as simultaneously both a ‘Court but it’s just so [sic]
smaller’ (lines 15-16) and as a space where ‘things [that] are kind of … changed around and so you don’t know exactly how it is’ (lines 16-17), in order to emphasise the discord created for her between the expected/imagined and the reality.

Secondly, she implicitly questions the purpose of these meetings. It is likely that Kaya was expecting her discussions with the Judge to range across a spectrum of topics, which might have included ‘my holiday’ and ‘if I was OK and stuff’ (lines 10-11), but also matters pertinent to the proceedings and importantly, her views in that regard. Crucially then, while it may have been explained to her that her case will not be discussed, Kaya’s specific reference to discussing holidays and her health, illustrates how being in Court and not doing what she really wanted to do, which was to speak to the Judge about going home, left her feeling distinctly uncomfortable and unsatisfied.

There are certainly traces here of Kaya experiencing something similar to Vicki (extract 24 above) in the sense that her experience of participation felt sanitized. Even though Kaya may have been told in advance that she could not speak with the Judge about her case, reducing this version of participation to one that was devoid of personal context for her, meant her participation lacked the integral and active ingredient that for Kaya may have made this experience all the more meaningful. The emphasis placed on the Judge’s observation that ‘it doesn’t look like … it’s not like how you imagined it to be’, (lines 12-13) is perhaps revealing in this regard as it serves to encapsulate what Kaya struggles to elucidate: the momentary glimmer of mutual appreciation of the paradox where this version of participation has become so sanitized that it constitutes little more than what is termed in the academic literature (as discussed in chapter 1) as tokenistic (Hart, 1992). By implication, instead of helping to clarify and inform her, in their current format, Judges’ Meetings with Children might be adding to children’s sense of isolation in and exclusion from their proceedings by offering something that fails to live up to children’s expectations of participation both in terms of what they can expect to see and what they can expect to say and hear said.
My final extract in this section is from my interview with Cora, who participated by writing a letter to the Judge. Her Guardian offered this version of participation to her as an alternative to meeting the Judge, to whom she was aware her Guardian was going to recommend she and her sibling remain in care; a plan with which she did not agree. Her task in writing a letter, was to express her ‘wishes and feelings’ about her own family proceedings in a way that the Judge, who she had not met, would be able to relate and understand. This extract is Cora’s response to my question ‘can you tell me about your experience of writing to the Judge?’ Cora expresses dissatisfaction about writing to the Judge because having toiled over such a difficult letter, she was left with no feedback concerning whether it was received, read and if so by who: all modest expectations that are not asking a lot. But, as Cora explains, she was unhappy, and indeed, offended, to be left entirely in the dark as to what happened to her letter. She even canvasses whether she did anything wrong to warrant such discourtesy:

**Extract 26: Cora**

1. I have **no idea** if the Judge read it or not. I would have preferred for
2. it to be e mail, cos then you know that it's been delivered … and I
3. might have got a response. **What was the point of it?** […] I was **very**
4. offended (to not get an acknowledgement) because I mean … it's my
5. opinion and I'm allowed … I have the freedom to say whatever I want
6. to say. I haven't said anything wrong and I haven't said anything
7. that's not fitting for the conversation.

Usually, child participation is intended as a way to empower children and thus help them feel more positive about themselves and their circumstances. By contrast, what Cora describes is an experience that has disempowered her and caused her to feel both confused (‘**what was the point of it?**’ line 3) and ‘**very offended,**’ (lines 3-4). This suggests that despite placing significant store by her letter and what it could achieve, Cora perceives the lack of feedback as evidence of her marginalization from her own proceedings. She may even feel as if she has been tricked to engage with a system that insists on taking children’s ‘wishes and feelings’ and then abandons those same children in silence. In a sense, Cora is revealing the significant cost
involved to children who build themselves up into thinking their letter will be that direct conduit to their own proceedings and give them the chance to be heard and understood, only to be let down. It is likely Cora thought very hard about what she wanted to say, and how. This is quite an achievement in itself given she has no idea as to the identity of the recipient. Indeed, writing it all down involves a considerable personal commitment and investment in a process she has not been allowed to experience first-hand but is even so being asked to entrust her very intimate and considered ‘wishes and feelings.’

What she describes instead, is a process from which children are so detached that they often do not have the courtesy of an acknowledgement let alone a response. It is a process then that takes and does not give. There is nothing for Cora to relate to, at all, not even a computer-generated response confirming receipt that Cora canvasses might have been sufficient acknowledgement for her to shake off the sense of unimportance and marginalization she feels from her own public law proceedings and those charged with making decisions about her life. Her words ‘I would have preferred it to have been by e mail cos then you know it’s been delivered and I might have got a response,’ (lines 1-3) are very revealing in this regard as once again, they highlight how after all her effort, she is not really asking a lot.

**Discussion**

I found that the discourse of the ‘Participation-as-Marginalising’ predominated across the talk of the proceedings-experienced participants. Importantly, I found this discourse was mobilised by proceedings-experienced participants calling out their lack of opportunity to actively participate in ways that allowed them to relate meaningfully to their own proceedings and decisions being made about them.

What the discourse of ‘Participation-as-Marginalising’ reveals is the taken-for-granted notion that within professional participation practices, communication is seen as completely one way: as taking information from the child in the form of their verbal ‘wishes and feelings’ (Vicki) without providing a context for it, or taking the child’s ‘wishes and feelings’ in the form of a letter from a child without even acknowledging receipt of it, let alone engaging in any other
communication about it (Cora). Even in Kaya’s situation, her opportunity to be informed about the process by attending a Judge’s Meeting with Children, was one limited by the lack of context or sense she could make of her experiences in order to relate them to her own situation.

This discourse also reveals the damage that is caused to children by professional practices of participation that are not focused on active versions of participation that make it possible for children to relate to those making decisions about them. We will see in chapter 7 (extract 37) that writing to the Judge is perceived as a reliable and expedient albeit inferior substitute version of participation (in that case to children attending Judge’s Meetings with Children) that allows professionals to make good on promises to children that the Judge will know exactly what their ‘wishes and feelings’ are. In contrast, Cora perceived the practice of writing a letter to the Judge as extremely tokenistic. She felt so entirely let down by a process that allowed her to engage with and commit to it from afar, only to ignore her so completely.

Finally, what these extracts illustrate is how very little children actually expect from versions of participation to make them meaningful and thus engaging. Their expectations are, on the face of it, very basic indeed. These participants are asking to be acknowledged and appreciated in ways that are usually axiomatic: for professionals to just explain (Vicki), to just talk about the case (Kaya) and to just acknowledge the letter’s existence and who read it (Cora).

6.2.2 Making my Participation about Me.

The discourse of ‘Making my Participation about Me’ arose regularly in the talk of proceedings-experienced participants who were grappling to make sense of versions of child participation that foreground practices that favour professional impressions of children over what proceedings-experienced participants perceived as the real them. As a consequence, proceedings-experienced participants expressed feeling misunderstood and misrepresented in their own proceedings, and moreover, unable to do anything about it. I found that this discourse was mobilised by proceedings-experienced participants principally in the context of their talk about meetings with professionals who were charged with ascertaining the child’s ‘wishes and feelings’ during the course of the public law proceedings. What makes this discourse especially
pertinent is that it suggests that children struggle to make sense of the reason for having meetings with professionals at all because, as these participants make clear, these meetings do not achieve what they had expected and that is to make sure their views are fully heard, understood and reported in ways that promote them and their views. This also suggests that children define these meetings through their own lack of control over, understanding and purpose of the processes that generate how they are conveyed and understood by the professionals and crucially, the Judge who is making decisions about them. Understood this way, giving their ‘wishes and feelings,’ constitutes no participation for them at all because speaking to professionals does not help to connect them to their proceedings in any way that promotes them as individuals with important views about their experiences, their lives and welfare.

The first extract in this section comes from my interview with Layla, who remained in foster care when we met. Layla and I had been discussing her perceptions of her participation in work with social workers. My question ‘what did you think the Guardian’s job was?’ was aimed at encouraging Layla to speak about her experiences of participation with her Guardian, who I was aware had accompanied her to her Judge’s Meeting with children. Layla’s response revealed a scepticism about her participation generally, as filtered through professional practices that severely limited and curtailed what there was to know about her: her character, her likes and dislikes and experiences. In that sense she was voicing concern about practices that informed important decisions about her, but were based on fragments of information to which even she could not relate:

Extract 27: Layla

1 Layla: The Guardian, [...] she was still very selective of what,
2 erm, … she wanted to like … for example … to say out
3 of my own mouth … if that makes sense? It’s like
4 quoting a poem but only taking parts of the poem.
5 They’re only taking the negative stuff away from the
6 poem and not taking the positive.
Sara: Was she working for you, do you think? Or was she working for someone else?

Layla: She was working for me, but she wasn’t doing it in the way I wanted her to do it.

The depiction of her ‘wishes and feelings’ as a poem, conjures up a powerful image of something symbolized as meaningful and cohesive only by virtue of its careful arrangement as a whole. Poems hang together by the most fragile of threads so that losing, changing or moving one word will alter or damage its overall sense profoundly. As more than the sum of its parts, dismantling and re-working a poem would therefore fundamentally risk losing its essence. Thus, the image of a fractured poem (‘It’s like quoting a poem but only taking parts of the poem’, lines 3-4) epitomizes a sense that by participating in meetings with professionals, Layla has relinquished control of her own voice. Understood that way, what Layla reveals is that what she intended her Guardian to do was to speak for her but to ‘say out of my own mouth’ (lines 2-3) what she meant. Honed and edited, Layla felt it did not. It speaks to the limited or thin (Klocker, 2007) agency Layla perceives she has over how what she says, is re-produced by professionals and consequently becomes lost in translation. Thus, what is implied is that professional practice that operates focusing on evidence, building a case, and targeting certain information only (‘she was still very selective,’ line 1), dismantles the essence of the child’s ‘wishes and feelings’ and loses the nuanced, complex and important nature of them for the child. Importantly, Layla’s perception is that the information that is targeted is ‘negative stuff,’ (line 5). Whilst it is unclear whether this ‘negative stuff’ relates to the collation of evidence that bolsters the professional case for protection as discussed in chapter 5 or whether this relates to a collection of pieces of information that depict the speaker in a false light, or both, what is clear is that her awareness of how her ‘wishes and feelings’ have been used has altered her understanding of the reasons for her participation (lines 9-10). It has not been about capturing her voice and presenting that to the Court. Thus, by missing out key information, Layla’s sense is that her participation is not really about her views and experiences but about equipping the professionals to do their job. Interestingly, Layla also makes the point, in common with other proceedings-experienced participants that what she seeks from her participation is not very much at all. She just wants...
the Court to know the entirety of her account rather than de-contextualised and abridged versions of it. As we shall see in chapter 7, this trope of ‘not asking a lot’ runs through children’s accounts of what participation could achieve, and casts doubt over the fears professionals seem to have around what they see as children’s unrealistic expectations from their participation.

What was key for Kaya, and what is borne out by this next extract, was that professionals were listening to her. This was how she felt the ‘me’ was put into her participation. She recognises that this is not an easy task for her to achieve as she feels professionals do not even try and listen to her. They think their own opinions instead of really listening to hers. These observations were interesting in themselves as they left me with the impression that meeting with professionals for the purpose of giving her ‘wishes and feelings’ and attending a Judge’s Meeting with children had not satisfied her need to be heard:

**Extract 28: Kaya**

1. *I think that it would make you feel like there’s more of like, you in it, and it’s*
2. not just them thinking it. It’s your opinion. *Cos the whole process… the whole*
3. thing is about you and like it makes you like, … feel like,… someone’s*
4. *listening to you. You just want for someone to … I don’t know how to explain*
5. it…they can … there’s like … like they’ve got … like if you want to tell them an*
6. idea and you get to say how you want it to go, at least them trying will make*
7. you feel better? So, like if you say what you want, yeah.*

By drawing on the discourse of ‘Making my Participation about Me’ Kaya stumbles, perhaps unwittingly over the paradox of participation that arises when her view that ‘the whole thing is about you’ (lines 2-3) is juxtaposed against Kaya’s reported experiences of participation, which is that it’s ‘just them [the professionals] thinking it’ (line 2). This paradox resonates with the views expressed and discussed in chapter 5, where professionals felt unable to listen to children because they feared that listening, allowing those wishes to be voiced, meant they had to act exactly on those wishes (which by implication they assumed to be unrealistic or irrational).
This is because professionals felt caught up in the fear of having to let children down by being unable to deliver on the version of participation it was assumed children would seek. For Kaya however, making it ‘feel like there’s more of like, you in it’ (line 1) is at the heart of making her participation meaningful. When she breaks down what making her participation more about her means, we see that these are very modest demands indeed. She asks that professionals listen to her (line 4) and linked to that, for her opinion to be taken into account (lines 2 and 6). Interestingly, Kaya qualifies her already modest demands to ‘at least them trying will make you feel better,’ (lines 6-7). By diluting her demands like this, Kaya makes explicit that even done badly or even failing entirely, trying to listen to children’s opinions is better for children than not trying at all. The implication is that, as things stand, professional practices rule out the prospect of professionals even trying to listen to children and by extension preclude them from trying to make children feel better.

Discussion

The discourse of ‘Making my Participation about Me’ is a subtle and sophisticated discourse that is mobilised by participants to highlight the damage to children of professional practices that do not focus fully on what children say. In that respect, this discourse problematizes professional practices that focus in a piecemeal way on what children say (Layla) or in other generalized ways on what children mean to say, which is what is, by implication, left when children’s opinions are discarded (Kaya).

This discourse also operates so as to highlight the benefits children perceive to flow from forms of participation that focus on putting them (children) back into their case through meaningful versions of child participation. The focus for Layla was to illustrate how making her participation about her would mean leaving her story or poem intact and not pulling it apart to fit someone else’s story about her. For Kaya, making her participation about her meant listening to her and placing value on her opinions (or at least trying).

However, whilst at one level this discourse produces very modest demands which can by implication be met by very minor changes to professional practice, they are demands that these
participants themselves appreciate as standing in stark contrast to the versions of child participation professionals feel able to support. Thus, whilst Layla expressly voices her dislike of these practices and Kaya seems willing to suggest anything to bring about change, pertinently, both participants seem unable to alter the status quo. Consequently, what these extracts demonstrate is the paradox of participation where children feel misrepresented and misunderstood as a consequence of giving their ‘wishes and feelings’ to professionals.

6.2.3 Welfare-through-Participation

The discourse of ‘Welfare-through-Participation’ was mobilized actively by proceedings-experienced participants who by making the link between participation and welfare, posit that practicing participation solely predicated on beliefs about welfare-through-protection misses the contribution their participation makes towards their own welfare and indeed to child protection. On examination, I found that proceedings-experienced participants were drawing on a number of those alternative ideas about participation I discussed in chapter 2, such as the child’s voice and agency, to frame their participation as central as opposed to peripheral to their welfare, and crucially, as alleviating trauma rather than causing it. The versions of participation that proceedings-experienced participants perceived as beneficial to their welfare were forms of active participation that brought children directly into contact with the Judge so that they could relate in ways that produced a shared understanding and common appreciation. Importantly, and as we shall consider in chapter 7, the versions of participation that professionals feared might be expected in the event that children were invited into Courtrooms, were not versions of participation proceedings-experienced participants voiced as beneficial. What was perceived as beneficial was a form of participation that offered explicit reassurance that they had been carefully listened to and that professionals had appreciated what they had heard. Broadly, these discourses act to question the discourses, discussed in chapter 5.2, that I found were recruited by professionals to produce and justify practices that focused on child protection, but when applied in the context of child participation, effectively talked it out of existence. As I will go on to demonstrate, appreciating the critical importance of child participation to child welfare, as expressed by my proceedings-experienced participants, gives us a new perspective about the critical importance of child participation to child protection itself. This is because in following
proceedings-experienced participants’ accounts, we can see that the two are not mutually exclusive.

This first excerpt is taken from my interview with Hope and is her response to a follow up question I posed, about whether she was pleased with the decisions that were made about the participation she had in her own proceedings. I asked this question because it was clear to me during her interview, which took place 30 years after the events of which she spoke, that Hope remained deeply troubled by decisions that prevented her having an opportunity to speak and relate directly to the Judge in her own proceedings. Here she voices how she felt blocked from being able to participate in her proceedings in ways that might have allowed her to influence decision-making processes. Crucially, the implication here is that the failure to let Hope speak directly to the Judge meant that her strong views about not seeing her parents could not be properly conveyed and as a result, the Court reached a decision that she felt was not conducive to her ‘best interests’. Understood this way, the discourse of ‘Welfare-through-Participation’ functions across this extract to problematize professional versions of participation that distance children from their proceedings and thus prevent children participating in ways that allow them to contribute to decisions about their welfare:

Extract 29: Hope

No. No. Completely not. […] I felt completely shut out of my proceedings.

Like I said to my social worker ‘I don’t want to see mum … and dad. I don’t want to see them at all’ and the Courts said we had to and the Court set down what and how we would see them and when we would see them and I was like ‘who are you, telling me I’ve got to see them?’ … But then you’ve got to accept it because everyone is going along with it […] and the damage it done [sic] that bloody contact, you know? It was ridiculous […] I am convinced that if I had have got [sic] to speak to the Judge, my life would have been different, because I wouldn’t of [sic] had to have contact. I’m convinced that if I could of [sic] met him and said to him ‘this is why I don’t want to see my mum and dad,’ he wouldn’t of [sic] made me do it. So, for
me, the anger wouldn't of [sic] been so serious. I wouldn't of [sic] been disregarded and I would have been able to tell him my wishes and feelings. And I would of [sic] hoped that a Judge would of [sic] listened to that.

Hope draws on repertoires of voice ('I would have been able to tell him,' line 13) and listening ('I wouldn't of been disregarded' lines 12-13 and 'I would of hoped that a Judge would of listened to that', line 14) to explicitly demonstrate the devastating consequences she suffered by being unable to voice her opinions directly to the Judge about going to see her parents for 'that bloody contact' (line 7). As we know from the academic literature, concepts such as voice and listening are associated with enhanced welfare outcomes (James & James, 2004; Tisdall & Punch, 2012) and perhaps unsurprisingly, inform repertoires that are overtly present and recruited as inherently linked to the discourse of 'Welfare-through-Participation'. Indeed, these are the ideas that implicitly fuel her direct challenge 'who are you, telling me I've got to see them?' (line 5), more widely underlining the significance of the relationship between those versions of participation where children are supported to speak and to be heard and welfare. The implication is that had she been able to speak to the Judge directly, she would have avoided the damaging effects she experienced to her welfare. Crucially, these words belie the inherent idea that even though she 'would of hoped that a Judge would of listened to that,' (line 14), if the decision had not been in her favour, at least she could be sure she had tried to persuade the professionals about the strength of her views. That is much more preferable to having a decision imposed on her that was made in the absence, she believes, of her very strong views. What is made clear through the discourse of 'Welfare-through-Participation' is that having that opportunity would have dispelled the serious anger (line 12) she associates with being deprived the opportunity to make her views known and heard directly. When balanced against the potential benefits to her welfare that Hope illustrates: both from potentially avoiding the 'damage [of] that bloody contact' (lines 6-7), to feeling properly heard and acknowledged no matter what the outcome, the fear professionals express about children having the opportunity to speak to the Judge pales into insignificance. For Hope, it is a small risk to run in comparison.
This next extract is taken from a longer response Vicki gave to my enquiry about her experiences of participation in her proceedings. Here Vicki is responding to a follow-up question I asked about whether she felt she was able to express her views about her situation to professionals in an influential way. She speaks here about feeling cheated out of opportunities to speak so as she can be clearly heard and understood. She wonders about how different her life might have been had her participation been perceived as important to her welfare. By doing so, she contrasts the potential benefits derived from such a version of participation with the actual damage she associates as resulting from her experiences of versions of participation that she felt stifled her voice and her ability to be heard:

**Extract 30: Vicki**

1. You can’t defend yourself if you’re not there. And you can’t even say
2. ‘they’re lying!’ (raised voice) or ‘that’s rubbish!’ (raised voice) or ‘listen to me!’ (raised voice) or anything like that because you don’t know what’s going on. I could be doing maths in a lesson and that could be going on, you know? I don’t think that’s fair. […] and it’s a human right … well, it’s not technically a human right by legislation, I don’t think, but as a young person you are always gonna look back on how choices were withheld from you in your own future and you may regret your own choices but that’s down to you but if you resent someone for taking a choice away from you or making you do something, that’s entirely different […] when you’re completely stopped from something or forced into something it becomes containment and you feel trapped. You can’t relax and feel stable if you’re trapped. You can only feel relaxed and stable if you feel like you’ve got choices and you feel like you’re being heard.

The juxtaposition of the agency and voice she did not have that produce a child who can ‘say ‘they’re lying’ or ‘that’s rubbish’ or ‘listen to me,'’ (lines 1-2) with those professional practices that produce a child (the speaker) who was ‘completely stopped from something or forced into something’ (line 11) is compelling, as it sheds light on how a child can be actively shut down
when what constitutes her welfare is decided and controlled by others. Indeed, it is made all
the more compelling by its delivery as direct speech, conjuring up the reasonable types of
contributions she might have wanted to make but was prevented from making.

Notably, the negative consequences she highlights, reflect those implicated across the
academic literature around the types of listening practices found in child protection and family
proceedings work, which were discussed in chapter 2 (Callaghan et al, 2018; Davies, 2014;
Skjorten, 2013). Key in that regard is how professional assumptions about children’s perceived
incapacity or deficits, validates proxy practices where what the child says and knows can easily
become overlooked. As referenced in that body of literature (for example McLeod, 2016;
Davies, 2014), and which resonates here, is how integral feeling heard is to cultivating
children’s sense of empowerment or control (‘You can only feel relaxed and stable if you feel
like you’ve got choices’, line 13-14). As a consequence, extolling the unfairness of a system
that takes away her right to choose to be present, and moreover, to do so without her
knowledge, appears common-sensical. This is perhaps more so when all that was being sought
was to ‘feel like you’re being heard’ (line 14), again reflecting the trope that she was not asking
very much.

As discussed in chapter 5, professional participants in this study were deeply troubled by the
prospect of children coming into the Courtroom and speaking to the Judge. In contrast, the fact
that ‘you don’t know what’s going on’ (lines 3-4) and have otherwise been going about your
daily business such as doing ‘maths in a lesson and that could be going on, you know?’ (line
5) speaks to the paradox where professionals believe keeping children away from Court is very
protective whereas some children think being kept away from Court is very unsettling. In that
sense, the picture Vicki paints of being trapped by being excluded from her proceedings (lines
12-13) is pertinent as the implication is that by making decisions behind her back, all her
choices were taken away.

In this next extract, we hear from a proceedings-experienced participant who in contrast to
Hope and Vicki, spoke about the actual benefits derived from those versions of participation
that provided her with an opportunity to be heard. As a child subject to her own public law proceedings, Estelle had instructed her Solicitor directly, filed statements and given evidence at a final Hearing where she was allowed to stay and hear some of the evidence given by the professionals (but not her mother or step-father). I have included an extract from her response to my question about the difference that her experiences of participation have made to her life here because it gives a sense of the nuanced interplay between the often-contradictory discourses of welfare and participation and how, in constructing welfare through the discourse of ‘Welfare-through-Participation,’ there is potential for overlap. By framing her experiences of participation implicitly through repertoires of the child’s voice and agency, she highlights the importance of her participation to her welfare. Pertinently, Estelle makes no attempt to infer that participation is more important for older children and consequently that its importance is related to age, or competence, or maturity; as informs professional discourse. This is because the discourse of ‘Welfare-through-Participation’ is informed, less by welfare with emphasis on the essential nature of childhood and the necessity of the adult’s voice, and more by welfare with emphasis on the agentic or relational nature of childhood and the importance of the child’s voice as experienced in relation to others:

**Extract 31: Estelle**

1. *I think it is important ... really, really important. And I wouldn’t of [sic] been happy at all if I hadn’t of been involved or included ... not at all. I would of gone mental* (laughing) *erm, and that would of just rubbed me right up the wrong way I think. So, I think it is important ... and it helped me settle as well because, you know, I’d done this. I’d had my say and now I’ve [sic] got people working for me to get my say heard. So, I did like that. It helped me settle a lot more and so I think that is critically important* (2 seconds).

Stressing the critical importance of her participation (she mentions ‘important’ four times in this passage), foregrounds the idea of child participation as integral to welfare. For Estelle, participating by directly speaking to the judge (as a witness) enhanced her welfare by enabling
her to ‘settle a lot more’ (line 16). This is described in terms of the level of control she felt able to exert over her circumstances as the subject of her public law proceedings, who had ‘my say,’ (line 14). Pertinently, the importance Estelle associates to having her say is not linked to whether she achieved the outcome she wanted but that she actually had the chance to be included in the decision-making processes and to be heard in a way she appreciated. In this respect, her participation afforded her the scope to relate directly to and with the decision-makers. Crucially, Estelle highlights that by having her say, her influence filtered beyond the immediacy of her presence. She had ‘people working for me to get my say heard,’ (lines 14-15), which suggests that in her absence, what she said would continue to resonate as a voice competing more equally with the contradictory voices or opinions that remained in the Courtroom.

Importantly, what Estelle highlights is simply how the experience of feeling listened to and feeling included in decisions about her life, made such a positive difference. Indeed, Estelle implies that she has escaped the fate of other children who did not feel heard and included by expressing how she ‘would of [sic] gone mental’ (line 3) by being damaged or trapped by professional decisions that were taken about their welfare without including them. Instead, Estelle provides a glimmer of the versions of participation that might be both possible and reconcile the tensions that separate practices as either protective or participatory, but not both.

Thus, by drawing on the discourse of ‘Welfare-though-Participation,’ Estelle re-constitutes child participation as an important element of the task that professionals face, which is to, as far as is possible, enhance the wider welfare-related needs of children. In that regard, versions of child participation that involve and include children (line 2) and support them to have their say (line 5) are constructed as being mutually beneficial and compatible. This is because supporting children to have their say enhances wellbeing by allowing children to settle and importantly, avoid the detrimental outcomes that professionals no doubt regard as lacking in protection and thus antithetical to welfare.

Discussion
The discourse of ‘Welfare-through-Participation’ is mobilised by proceedings-experienced participants to re-frame welfare through the lens of their own version of participation. This has important implications for children and professionals for two reasons. Firstly, by foregrounding children’s experiences, it positions them as competent agents in their own proceedings. In this regard, what proceedings-experienced participants are highlighting in these extracts are the benefits to them of a shift in professional practice so that children feel heard and included. It is a cry for professionals to acknowledge their capacity for agency. What is not being sought is for children to take over the process. It is not about having their way. It is about being able to relate to professionals by having their ‘say’ (Estelle and Vicki). It is also about being relatable for professionals. Speaking to the Judge might have helped the Judge understand just how damaging Hope’s contact with her parents actually was for her, she felt. Having had her say, Estelle felt assured professionals understood her position and could then get her ‘say heard.’ For Vicki, it meant she could help professionals understand her experiences instead of repeating what she perceived as ‘lies.’

Secondly, by foregrounding the importance of that version of participation to their wellbeing, this discourse provides a way of thinking about child participation that begins to align participation with welfare. This does not mean that child protection is not important but that it is instead placed in context. The implication is that by drawing on the discourse of ‘Welfare-through-Participation’ it becomes conceivable to think about children’s best interests in a more relational way; where there is the possibility for the welfare interests as perceived by child to align with those as perceived by professionals. This can be seen in how proceedings-experienced participants in this study draw on the discourse of ‘Welfare-through-Participation’ to highlight what does not work for them, but equally what does. The extracts from Hope and Vicki illustrate, for instance, how professionals could have supported them to participate in ways that aligned with their version of participation and simultaneously avoided the detrimental and distinctly un-protective contributions their actual experiences of participation made to their wellbeing. In contrast, but equally forcibly, Estelle drew on this discourse to emphasise the importance of this version of participation in contributing positively to her wellbeing.
Certainly, when protection is re-formulated through the lens of welfare-through-participation, what is revealed is the paradox of how, instead of enhancing welfare, professional practices that limit child participation to certain versions that foreground risk, safeguarding and enhanced protection, can trap and traumatise children; precisely the types of outcomes professionals are fearful to avoid. Thus, what becomes harmful in welfare terms are exactly those axiomatic practices that stifle rather than support children’s opportunities to meaningfully participate in their own proceedings.

I continue my analysis in relation to ‘child participation’ in chapter 7. Here my focus is to examine how participants in this study expressed being affected by their experiences of child participation.
CHAPTER 7 – THE AFFECT OF CHILD PARTICIPATION

Introduction

In chapters 5 and 6 I examined the constructions of childhood and child participation mobilised by participants to talk about child participation in public law proceedings. Consequently, I found that their attempt to specify participation and account for their practices/experiences in the context of public law proceedings ended up paradoxically talking child participation out of existence. What became equally interesting for me was that the data showed how those moments of paradox were also deeply affect-laden. On occasions participants just told me how they felt about child participation but on other occasions their discomfort/tension was articulated by a raised voice, a laugh, a sigh or indeed, tapping on the table or arm of a chair. As referenced in chapter 4, I coded for those events when I initially transcribed the audio interview recordings.

In this chapter I focus on the affective practices (Wetherell, 2012) that I found in my data and which I argue signal a stalemate, or an impasse: a paradox in my participants’ talk as they search to make meaning of their participatory experiences. This is an additional but important focus in my research because it allows me to draw attention to the affect of the discursive paradoxes embedded in child participation in public law proceedings. In this sense paying attention to affect is a key tool through which to analyse my data.

I also draw on the concepts of liminal hotspots (Stenner et al, 2017) and ‘homeless affect,’ (Kofoed & Stenner, 2017). As outlined in chapter 3, a liminal hotspot is characterised by being stuck or caught in the ambiguity between competing and often contradictory demands. These ideas help to explain the tensions we discussed in chapter 5 where professional participants clung on tightly to existing practices and found it hard to challenge or change those they knew were dysfunctional, even when they had doubts about whether what they were doing was promoting either child protection or child participation. In this chapter I explore examples of where professional participants try to defend and indeed fortify their practice as the only way to
practice child participation, again often by talking it out of existence. In contrast, other professional participants report the agonizing feeling of having failed personally by attempting to support what they thought was meaningful participation. Thus, these extracts highlight how neither fervently rejecting nor engaging with participation led to satisfactory outcomes for these professionals. The concepts of liminal hotspots and homeless affect also help explain the tensions we discussed in chapter 6 where proceedings-experienced participants found it so very hard, to equate their experiences of child participation as being opportunities for them to speak and be heard, or to be informed. In that sense, these participants were highlighting how hard it was to resist practices that ended up limiting their participation. Through the concepts of liminal hotspots and homeless affect, I explore how proceedings-experienced participants report the distress and confusion of feeling entirely excluded from participating at all. In contrast, other proceedings-experienced participants expressed anger and frustration at how their actual experiences of some versions of participation did not meet their very modest expectations of what their participation might achieve. In that sense, what these extracts highlight is how participants expressed the negative affect of operating in a discursive system that imposed considerable limitations on their ability to think about, support or receive support to participate. The key point is that even though participants gloss over these hotspots and move on, the affect remains as an inevitable consequence of their situation for which they mostly blame themselves. Thus, they are stuck with this ‘homeless affect,’ that presents as a personal concern that they feel unable to shift, address or share.

I intend to examine these matters over the course of this chapter. I divide this chapter into two sections. In the first section I answer question 3. In the second section I answer question 4. These research questions ask respectively:

3. What do professional participants’ expressions of affect reveal about discourses of child participation practice in public law proceedings?

4. What do proceedings-experienced participants’ expressions of affect reveal about discourses of child participation practice in public law proceedings?
7.1 The Affective Practices of Professional Participants

In this section I address what professional participants’ expressions of affect revealed about their child participation practices under the terms ‘Crossing the Line: Wrestling with Discomfort’ and ‘Can’t do Right for doing Wrong.’ In other words, I am bringing attention to the affect of the discursive paradoxes that proliferate professional participants’ thinking about or practice of child participation in public law proceedings.

7.1.1 Crossing the Line: Wrestling with Discomfort

The term ‘Crossing the Line: Wrestling with Discomfort’ encapsulates the visceral dislike of these participants for practices of participation that collide and interfere with practice organized around welfare-through-protection. In this sense, participants’ expressions of affect legitimated their response to the misery and discomfort of thinking about or contemplating some versions of child participation by entrenching their resistance. As I illustrate, what these expressions of affect have in common is that they manifest in a real resistance to versions of participation that bring children into direct contact with their proceedings. This was because these participants felt supporting children to engage directly in their proceedings, by being a witness, instructing their own lawyers, or attending Court, inevitably blurred the boundaries around what it was possible for professionals to protect children from. In other words, what these participants revealed through their expressions of affect was how child participation manifests discursively as viscerally incompatible and thus inherently paradoxical with practising child protection.

We can see in this first extract, that for Charlotte, a Social Worker, the idea of 5-year-old children being witnesses is so deeply antithetical to child protection that it seems impossible to express how uncomfortable it makes her feel entirely words. She builds up to this position by reviewing a series of factors that in the context of her thinking about 5-year-old child witnesses inform her resistance to it as really crossing a line. These concerns are not simply related to how a 5-year-old might cope developmentally with giving evidence but how they might cope facing professionals in a Courtroom who she feels want to trip children up and twist their accounts:
Extract 32: Charlotte

1 The most immediate concern for me is just ... it comes from 'what's
2 their language ability? How can you be certain that what they say
3 is exactly what they mean... and that they understand what they're
4 being asked?!!! And, you know, ... their development! [...] 
5 all of those little pieces for me just make me think 'euwww'!!! [...] 
6 going through the twists and turns with people who are
7 deliberately trying to trip you up (3 seconds) putting a 5-year-old
8 through that seems to me pretty awful.

By drawing explicitly on her social work training, Charlotte mobilises those professional
discourses of childhood, discussed in chapter 5, that produce images of children through their
lack of competence as incomplete and thus (ultra)dependent and (ultra)vulnerable. In this
regard, she hints at the 'Essential Child' discourse by referencing 'language ability,' (line 2),
competence, (How can you be certain that what they say is exactly what they mean... and
that they understand,' (lines 2-3) and their 'development' (line 3).

However, by checking how 'all those little pieces' (line 5) fit together through the lens of the
‘Essential Child,’ they are framed as the innumerable and unimaginable obstacles that make it
impossible for her to comprehend of 5-year-old children giving evidence. When this is placed
in context of the children she works with as a social worker, she is likely to be thinking about 5-
year-old children giving evidence about the very experiences that make them ultra-vulnerable
in the first place. In this sense, she is likely to also draw on the ‘Care Proceedings Child’
discourse. In any event, these discourses provide her with a very powerful platform from which
to highlight the very difficult challenge she feels she faces supporting a version of participation
that sets young ultra-vulnerable children up for something she feels is so very developmentally
beyond them and thus so deeply antithetical to her urge to protect. Read this way, what
‘euwww’ does is draw attention to that paradox and legitimize her entrenched view of these
practices as deeply un-protective.
In drawing attention to the paradox, Charlotte draws on an extreme case formulation (Pommerantz, 2005) to conjure up the seemingly common-sense position she takes. She invites us to imagine a 5-year-old child appearing in the Family Court in person to give evidence, and moreover, giving evidence whilst facing the dubious tactical practices and agendas of Court professionals trained to trip children up (line 7). What this common and effective device does here is provide the platform for Charlotte to illustrate how uncomfortable it is for her to face even the prospect of any 5-year-old in Court. Such an idea simply crosses a red line. This is because letting them give evidence implicitly suggests she is knowingly exposing 5-year-old children to the harm she associates with 'going through the twists and turns with people who are deliberately trying to trip you up' (lines 6-7). Thus, without uttering the words 'protection', or 'risk', the 'hit of affect' (Wetherell et al, 2020, 18), as manifests in expressions such as 'euwww' (line 10) and ‘awful’ (line 8) reinforce the idea she wants to get across: that it is sheer madness to put a 5-year-old forward as a witness.

As discussed in chapter 3, such moments constitute what can also be termed liminal hotspots (Greco & Stenner, 2017; Motzkau & Clinch, 2017). In following Greco & Stenner (2017), I use this term to describe the trouble or affective ‘heat’ generated by these paradoxes when they become potentially paralyzing or overwhelming, so as to make it impossible to find a way out. In Charlotte’s case, the liminal hotspot reflects the pinnacle of that paradox discussed above, where she is stuck having to think about the prospect of 5-year-olds giving evidence because, despite her better judgement, there is precedent for this to happen. Clearly, if no child of 5 ever participated in their proceedings as a witness, Charlotte would not have to worry about how repulsive she finds such scenarios. However, given the way policy is set out, she is inevitably immersed in the paradox. Strictly speaking, the affect she associates with this version of participation is unnecessary because it is part of her job to remain open to the prospect of 5-year-old witnesses. But instead the prospect of supporting 5-year-old children to give evidence causes her internal chaos by rubbing against her professional urge to protect children. All the while this is not explicitly acknowledged, Charlotte has no outlet for how this affects her because she has to carry on and be mindful of the legal rules. Thus, the affective force of the paradox
recurs, inevitably as there will be situations where this issue arises, despite her efforts to gloss over it, with expressions such as ‘euwww.’

In this next extract, Emily, a Solicitor, demonstrates her strong aversion to any children being witnesses. When I asked for her views on children of different ages being witnesses, she cut across me to speak more generally about how the thought of any child giving evidence made her uncomfortable. Indeed, this is a view that she presents as commonly held, even though when it comes to older children, she concedes that there might be reasons why they might have to give evidence:

Extract 34: Emily

1 Oh, I don’t like that…(2 seconds). I find this really difficult. I think
everyone does. I think every single person is quite uncomfortable
2 about the thought of a child giving evidence…whatever their age.
3 But obviously as they get older…I’m not going to say it gets easier…
4 I think it gets (4 second pause) it doesn’t get easier (2 seconds). I
5 think it might become clearer, if that makes sense…whether they
6 should give evidence or not, (2 seconds) if that makes sense?

Rather than delve into policy or discuss issues with professional practices around children as witnesses, Emily chooses to frame her response around how it affects her personally (‘I don’t like that, […] I find this really difficult’ (line 1). In that sense, what Emily reveals as ‘really difficult’ (line 1) and which compels her to reject this version of participation entirely, is the very visceral discomfort that exists for her in reconciling children being witnesses with the ‘Essential Child’ discourse (‘whatever their age,’ line 3). Recruiting ‘every single person’ (line 2) to her plight, suggests she considers this a common sentiment, underlining the legitimacy of such feelings. Indeed, by implicating ‘everyone’ (line 2), Emily emphasizes just how natural her urge to protect is.
However, by immersing herself so wholly in the ‘Essential Child’ discourse, she makes it difficult to envisage even older children as witnesses. In this sense, Emily’s increasingly frequent hesitations are revealing as they illustrate how difficult it is for her to acknowledge that age is itself one of those very factors that professionals must have in mind when reaching a decision about children giving evidence.\(^{58}\) In that sense, her hesitations highlight her conviction to try and stick to the ‘Essential Child’ discourse, no matter what (But obviously as they get older…I’m not going to say it gets easier…I think it gets (4 second pause) it doesn’t get easier (2 seconds), lines 4-5).

However, because her views are not simply associated with age (if they were, the concession would be easy) but driven viscerally by the urge to protect, she becomes stuck with her argument. She simply cannot finish her sentence ‘but obviously as they get older’ (line 4) with the anticipated ‘actually, it gets easier’ but opts for a more ambiguous compromise: that it is ‘clearer’ (line 6). Inherent in that description is the concession she knows she has to make because she knows there will be times when she has to support children as witnesses, whether she likes it or not. Like Charlotte, Emily shows how she is suspended discursively between paradoxical practices of caring and protecting whilst also being tasked, against everything she believes, to support children speaking as witnesses. Paradoxically, by trying to block this version of participation out, for all children, she is also compelled to re-immerses herself in the liminal hotspot again and again as the reality is that every case carries the risk of children seeking her support to be a witness in their own proceedings, and indeed precedent case law expects her to do so.

As we shall see in this next extract, the liminal hotspot manifests for Kim in her contemplation of thinking about children who instruct lawyers. Whilst instructing their lawyers directly does not necessarily mean children will come to Court and hear the evidence, this version of participation does involve children seeing information that is otherwise only available to adults. Kim is a social worker, who in responding to my question ‘how might your ideas about childhood affect your decisions about child participation?’ spoke about how thinking about children instructing

\(^{58}\) As per para 26 in Re W (Children) [2010] UKSC 12
lawyers caused her to feel anxious because it went against all those ideas she held about childhood as a time of innocence, being carefree and by implication trauma-free:

Extract 35: Kim

1. Maybe the idea of preserving innocence… and wanting to protect …
2. and wanting children to be carefree (sigh). I think it’s hard to separate
3. those ideas from (3 seconds)… these ideas are values that are
4. instilled in you… that’s probably where it comes from (2 seconds).
5. My nervousness in wanting … not wanting a child to instruct their own
6. Solicitor and **not** wanting them to see their own evidence is about
7. **protecting** them. I **don’t want** this child to be traumatised! I **want** this
8. child to be carefree! I **don’t** want them to worry! I **don’t** want them to
9. feel all of these things that, you know; … I **wouldn’t want** my own
10. children to feel.

Kim’s immediate thoughts about childhood, about its associations with innocence, protection and being carefree, (lines 1-2) are ideas that, as we have seen elsewhere, make the urge to protect so total. These are the ‘Essential Child’ and ‘Care Proceedings Child’ discourses that in consequence, make some versions of child participation impossible. Indeed, promoting those ideas to ‘values’ (line 3) that are ‘instilled’ (line 4) serves to reinforce their natural status for Kim and thus legitimate her compulsion to act on them (‘it’s hard to separate those ideas,’ line 3), both as a mother (‘I **wouldn’t want** my own children to feel,’ lines 9-10) and a professional (not wanting a child to instruct their own Solicitor and **not** wanting them to see their own evidence,’ lines 5-6). When Kim speaks about ‘wanting… **not wanting**’ (‘want’ is mentioned ten times across this extract) she infers the naturalness of ‘**protecting** them’ (line 7). Indeed, she directly links her actions to protect as alleviating or calming her ‘nervousness’ (line 5). In that respect, her anxiety acts as a ‘call to arms’ because it informs her when her own red line between protective and un-protective practice has been crossed. This struck me as especially important in the arena of public law proceedings because it hints at another paradox (expressed by proceedings-experienced participants themselves) that even when professionals are working
with children who are already traumatised, professionals remain wedded to the idea that carefree and innocent care proceedings children exist. However, by ‘wanting’ to protect this idealized version of childhood, Kim inevitably voices the impossible: protecting care proceedings children, traumatised children, from trauma (‘I don’t want this child to be traumatised!’ line 7). This is the paradox that makes her attempts to practice deeply uncomfortable, albeit also inevitable, thus revealing how the dominant discourses they grip onto so tightly, set professionals up for liminal hotspots.

In this sense, what this extract highlights, is the very visceral grip that the discourse of the ‘Essential Child’ has over professionals and which professionals cannot let go in order to support some versions of child participation (‘not wanting a child to instruct their own Solicitor and not wanting them to see their own evidence,’ lines 5-6). However, in striving to achieve this ideal, professionals also strive to restrict children’s exposure to anything potentially traumatic (practices proceedings-experienced participants perceive as highly secretive and damaging to them, as illustrated by extract 39). Thus, whilst the perception is that professionals save children from the trauma of participating, my analysis suggests that professionals might actually be saving themselves, temporarily, from the liminal affect they associate with these versions of participation.

In this next extract Elizabeth responds to my question about children of different ages being witnesses in their own public law proceedings. Elizabeth re-frames our discussion about children of different ages being witnesses in their own public law proceedings by introducing a version of child participation that I had not asked about, and that seems fairly unlikely: that of children coming into Court and listening to the evidence. Speaking about child participation from the perspective of someone concerned about this hypothetical and very unusual version of participation, provided a platform from which Elizabeth could legitimately mock and reject out of hand attempts at bringing children into Court as ‘bonkers’. These were particularly profound revelations given they were voiced by a professional who is herself training advocates how best to ask questions of child witnesses, and thus her commitment to working with children as witnesses was in little doubt:
Extract 36: Elizabeth

I'm not sure you would seriously suggest that a child should seriously actively participate in the proceedings and listen to the evidence? Because that's … that's sort of by implication what you might (2 seconds) what the logical inference is (3 seconds, telephone ringing) and that is bonkers (2 seconds, telephone ringing) on so many levels! For example, firstly they should not (telephone rings) be exposed to the adversarial stuff (telephone rings). They shouldn't be taken out of school, (telephone rings) they shouldn't … Excuse me, I will just get this (25 seconds on telephone). I suppose if you project forward you can see a situation where there are more child-friendly Court environments, if such a thing exists (laughing). If we had well trained professionals, well supported and trained who could ask children questions for their evidence.

Implicit in the version of participation on which Elizabeth bases her account is that children might sit in the Courtroom to 'listen to the evidence' (lines 2-3), that is, hear what professionals and their parents have to say about them. As discussed in relation to extract 32 above, this extreme case scenario (Pommerantz, 2005), is intended to persuade me that Elizabeth is right to regard this version of participation as sufficiently concerning to be ‘bonkers’ (line 5). So, by hitching her concerns as children’s protector to this extreme and unlikely scenario, she creates a situation that draws a red line under and mocks at the idea of children participating in their actual Court Hearings at all. In that sense, she is re-enforcing her own rationale of this version of participation as being a 'logical inference' (line 4).

As such, ‘bonkers’ portrays more than what she can convey by raising her voice (transcribed in bold) or by using colloquial language that is not ordinarily associated with legal practice. ‘Bonkers’ encapsulates the deep discomfort or liminal affect for professionals, created by the paradox of envisioning children in Court, listening to the evidence whilst being compelled to
protect them from hearing or seeing anything traumatic. So, Elizabeth’s red line of ‘bonkers’ fervently rejects out of hand that children should ever participate in Court Hearings.

Also, by describing something as ‘bonkers’ renders it as too incredulous to discuss in nuance. It is an attempt to stem the possibility of a floodgates scenario where all children might come to Court, which it is quite obvious to her is extremely un-protective for children. But because she (and I) know that children do come to Court, even when essential discourses about childhood drive professionals to privilege their concerns about child protection and education (lines 6-8), dismissing the concept of children in Court wholesale as ‘bonkers’ is not an option.

It could be argued then that the real deadlock captured in her fervent argument and which causes her to remain unsettled was actually the fear she harboured about all children inveigling the Courtroom and the consequences that might have for professional practice and the process itself.

It is a shame Elizabeth answered the telephone when she did, as it seemed to disrupt her flow. When she returned to our discussions, her fervour had gone. However, what she expressed in those more reflective moments is equally but perhaps more subtly affect-laden, and supports my impression about her fears for professional practice. Intended in what might have been a shared collegiate moment with me as a fellow professional, Elizabeth’s laugh (line 12) at the contradiction in terms is revealing. The contradiction she is referencing is that if Courts were actually child-friendly, they could not be Courts and as such, professionals can never be sufficiently ‘well supported and trained’ (lines 12-13) to make Courts child-friendly. So, her laugh serves to express how she feels she can, quite legitimately, resist her own ‘logical inference’ (line 4). Thus, despite her efforts to achieve the opposite where as a professional she is actively training advocates how to ask questions of children in child-friendly ways, the paradox that Family Courts can never be sufficiently ‘child-friendly Court[s]’ (line 11) serves to settle her, at least momentarily. However, Elizabeth remains caught up affectively because for her, there is no solution to the real paradox: the immutable fact that Courts are to her, by definition, not child-friendly, yet she herself has to acknowledge that she is tasked with making them appear so, in order to promote and support children’s participation. In that sense, she is
charged with doing what she fears and that is contemplating children acting more autonomously within that environment. She may be able to gloss over the paradox or laugh it away, but the prospect of children participating in ways that alter professional practices remains an issue that demonstrably affects her, even in its utopian impossibility.

Discussion

What is demonstrated across these extracts is how professional participants express their visceral dislike, repulsion or discomfort about certain active versions of child participation that bring children into contact in some way with evidence. What is at the heart of all these affective practices is the compulsion to protect produced by the discourses of the ‘Essential Child’ and implicitly of the ‘Care Proceedings Child,’ which means professionals struggle to make sense of how some versions of child participation can ever work, let alone be protective. Indeed, there are elements of this discourse in each extract. Emily and Charlotte draw on repertoires associated with the ‘Universal Child’ discussed in chapter 1: child development and age. By referencing ‘preserving innocence’ (line 1) and ‘being carefree’ (line 2) Kim drew on repertoires associated with the ‘Innocent Child’ to express her discomfort. Elizabeth drew on repertoires around the ‘Vulnerable Child,’ who should not be ‘exposed to the adversarial stuff,’ (line 7).

There is also a sense across these extracts of the indomitable force that drives professionals and indeed society to protect children so totally where disciplinary power, bio-power and pastoral power align. After all, being subject to that force leaves very little room to challenge why or how we are all compelled to care so much about children’s protection in quite a specific and rigid way. In that sense, setting out their red line in relation to the versions of participation they discussed, gives voice to their discomfort and acts as a moral justification to push back against otherwise legitimate opportunities that exist for children to participate in their own proceedings.

But, what is so interesting about the affective burden professionals expressed in thinking about and resisting versions of child participation is that they are constructed around extremes. Some drew on scenarios of unusual or unlikely versions of child participation. Charlotte described the very unlikely scenario of 5-year-old children actually coming to Court at all to give evidence, let
alone being allowed to face the dubious Courtroom tactics she recounted. Elizabeth set out the
scenario of children coming into Courtrooms to hear the evidence, which is once again a
scenario that is far removed from the idea of children giving evidence. Indeed, participating as
a child witness does not inevitably involve hearing evidence and indeed most likely will not
involve being in the actual Courtroom. Thus by drawing on idealized images of childhood such
as the ‘Essential Child’ and ‘Care Proceedings Child,’ in the context of extreme case examples,
we can understand how professionals feel driven to the conclusion that child protection and
some versions of child participation seem so inevitably paradoxical. This becomes
understandable even though in constructing this paradox it becomes nigh on impossible to
support legitimate versions of child participation at all.

Despite all their rhetorical effort these participants still have to face the turmoil some versions
of child participation cause them because the reality is that Courts are making decisions that
allow children to participate by being witnesses and by instructing their own Solicitors. Indeed,
Estelle is a proceedings-experienced participant who did just that. So, whilst highlighting how
fundamentally the compulsion to protect drives their practice in relation to some versions of
participation, these participants also speak to the liminal affect of being pushed beyond their
comfort zone when children do participate in all the ways these professionals resist. This means
that despite the misery even thinking about these versions of child participation causes them
personally, they are compelled to confront the professional reality. Indeed, expressing their
dislike or discomfort for some versions of participation in Court or in professional meetings,
might feel embarrassing because the paradox is so inscribed and normalized that it will appear
as if they were not coping professionally. After all, what they are describing are their very own
efforts to systematically subvert child participation opportunities that policy, case law and
guidance state they should be supporting, no matter how well intentioned their positions may
seem. Consequently, the homeless affect that is generated comes to be managed by
professionals by a fierce resistance that allows them to acknowledge and gloss over the
paradox, which they have to do in order to carry on.

7.1.2 Can’t do Right for doing Wrong
In the previous section I explored how professional participants expressed their visceral dislike for some versions of participation in order to justify their resistance to even thinking about the possibility of supporting types of participation they found so deeply antithetical to their primary professional roles of protecting children. In this section, I focus on the ways professional participants expressed the disappointment, shame and embarrassment they associated with actually trying to support versions of child participation. In that sense, these were participants highlighting the negative consequences of trying to support versions of child participation that despite being approved by the Judge as being in children’s best interests, were occasions that in fact reinforced the dominance of the welfare-through-protection discourses. As we shall see, instead of faring better than those who objected in principle, supporting the versions of child participation about which they speak, also came at a high cost to these professional participants. So, by doing their job they too felt caught between conflicting tensions that affect them personally and professionally. The paradox here is that these professionals feel undermined by doing what they are supposed to do and in that sense ‘can’t do right for doing wrong.’

In this extract, Kim, a Social Worker describes an occasion where, at short notice, the Judge (‘she’) cancelled plans made for a group of siblings to attend a Judge’s Meeting. Kim speaks about how undermined and professionally fragile she felt, being caught out on a promise she had given to children that they will meet with their Judge, but that she then was seen to break due to circumstances beyond her control. However, by making it explicit here how she feels she should have been able to keep her promise, she reveals the depth of her anger, disappointment and hopelessness. Indeed, this professional describes feeling so affected by this experience where she felt participation went wrong, that she reports having persuaded her social work team in future to only promote participation by way of letter-writing; as this is a version of participation she feels she can control and thus feels safer to offer:

**Extract 37: Kim**

1. She just thought that it wasn’t necessary ... it wasn't necessary and  
2. that it would cause more distress for the children, erm, ... There was
a lot of talk in these proceedings about how distressed the children were, you know, at the thought of what would happen...

you know? They were...they were distressed but the Judge thought it would be too distressing for them [...] So, you can imagine why they would then feel more...let down again, you know? ‘You didn’t,’ you know, ‘you didn’t give me what you said,...the one thing that I asked you and you didn’t allow me to...you didn’t allow me to have it’. So, erm, (sighing)…which is really, really disappointing (2 seconds). So, what we have said going forward is that if a child wants to meet a Judge, (long sigh) just in the event that it doesn’t happen in the same way (2 seconds) erm, that we are going to encourage them to write a letter, erm. And we are not going to promise that they are going to meet a Judge.

Implicit in the phrase ‘she just thought that it wasn’t necessary,’ (line 1), is a primary paradox for Kim, which is that supporting child participation is a risky business where the very attempt to promote it can be damaging to children and damaging to professionals. Kim articulates the distress caused to the children quite explicitly by her reference ‘So, you can imagine why they would then feel more...let down again, you know?’ (lines 6-7). Indeed, it could be argued that Kim is suggesting that the Judge’s volte-face has taken away the ‘one thing’ (line 8) they wanted. In that respect, the Judge’s decision has in fact exacerbated their distress.

Tracing the wider affect for Kim involves a more subtle exploration of the text, because what she expresses in nuance goes beyond the empathy all professionals might express in feeling they had (inadvertently) broken a promise to a child, although that is certainly part of it. What Kim also hints at here is the affective toll caused by actually trying but failing to do her job. In this case, that involved supporting the children and by extension the Judge to effect a Judge’s Meeting with Children. However, what has become clear to Kim is that by supporting this version of participation, she has found herself out of control of the process entirely. Thus, paradoxically, she finds herself in territory where her views, which would ordinarily carry
significant weight, (being voiced by a professional, seasoned in child welfare and who knew the
children well versus the judge who did not) have been so readily discarded: the Judge 'just
thought it would be too distressing for them…;' (lines 5-6). Indeed, she makes explicit that her
views have been ignored even when she knows the focus of their distress was in relation to
'what would happen' (line 4): that they might be distressed by the prospect of being separated
from their mother and each other, rather than by the prospect of talking to the Judge.

So, Kim is placed in the invidious position of having to explain to these children why 'the one
thing that I asked you' (line 8) did not happen. Even though it was the Judge who changed her
mind and will not meet the children, it is Kim who has to answer the children's quite legitimate
questions about why 'you didn't allow me to ... you didn't allow me to have it,' (lines 8-9). In
that sense, she is forced to explain why it is professionals cannot support children's very modest
requests, something that we saw in chapter 5 professionals were ordinarily at pains to avoid
(see extract 10). So, whilst Kim might be voicing that 'this is really, really disappointing,' (line
10) to show her empathy with the children, we can infer that these words also express her own
disappointment at feeling badly let down professionally. Thus, even when professionals are
expected as part of their job to build trusting relationships with children, partly by promising
what seems eminently foolproof, she still finds herself delivering the awkward news to the
children that she cannot keep her promises. It might be that these are the thoughts Kim leaves
unsaid but which reverberate through her sigh (line 10). The paradox is that Kim cannot make
participation work either way. Outright denying children the opportunity of attending the Judge's
Meetings might be construed as bad practice. However, supporting a request to meet the Judge
involves accepting the professional risks inherent in that practice, which we should bear in mind
is a version of participation described by Kaya, a proceedings-experienced participant as
marginal because it is ambiguous at best, if not a little baffling (extract 25, 6.2.1). Whichever
way she turns, practice feels wrong, dissatisfying and risky to her professional reputation.

In that regard, her longer sigh (line 12) might momentarily reveal the homeless affect for Kim,
where it reflects her resignation to the paradox. But instead of complaining about the Judge's
actions or cursing the system, which might simply position her as unprofessional or overly
sensitive or both, she very restrainedly reflects in hindsight that she herself is to blame; that she should have seen this coming and in that sense expresses her regret and embarrassment that she was naïve. However, because she faces the potential for any child to ask to see the Judge in every case, she will be exposed to the paradox again and again, of being caught between good practice where she supports children to participate or handles children’s expectations by supporting them to write letters.

What lends weight to my suppositions about her sighs is her perhaps inevitable professional retreat into ‘not […] promising that they are going to meet a Judge,’ (lines 14-15) that, whilst not ideal, this retreat means she can exert some control over these awkward situations where trust is lost, and limit the negative affect implicated with participation for professionals and children when this form of participation does not work out. At least, she tells herself, the children will have sent a letter. As outlined in chapter 6, however, there was a clear sense that engaging children to write letters to the Judge without giving any feedback about what happened to those letters, could be just as upsetting for children.

In this second extract, Laura, a recently retired Guardian, speaks about occasions where children have questioned her about the purpose of taking their ‘wishes and feelings’ when it appears to them, she has not forcibly presented them to the Court on their behalf as they expected. In the context of this interview, Laura went on to acknowledge those common professional practices, as both over-protective and harmful for children. Indeed, she expresses very strongly the unfairness this causes children whose views are ignored in Court by swearing. Having vented her frustrations, Laura sighs and changes the subject.

This talk arose unexpectedly in the context of her account of a child who secured, with her support, the opportunity to participate in her own proceedings by attending a Court Hearing. In that regard, Laura chose to bring up the paradox she knows exists for children who participate by giving their ‘wishes and feelings’ to their Guardian as their proxy. This is the paradox of participation that mandates that professionals filter and limit what children can say and be heard to say through professional practices organised around over-protection:
Laura says that being ‘over-protective’ (line 1) in professional practices can be harmful to children, as it means they can feel ignored and marginalised because ‘they believe nobody has listened to a word they’ve said,’ (lines 2-3). This resonates with what I have found across the talk of my proceedings-experienced participants; that children who do not go to Court to speak, struggle to understand how decisions came to be made about them: ‘I told you what I thought, and I told you what I wanted, but what the Court has said… they obviously haven’t listened to a thing I have said… and I wasn’t allowed to go.’ ‘That’s not fair.’ ‘Well, actually, I agree with you. It isn’t bloody fair!’ you know? So… (sighs) and I suppose I have had quite a lot of those experiences over the years, erm…

Indeed, it was surprising to me that she felt so strongly about these practices even after retiring. When we consider the affect she expresses through the lens of liminal hotspots, we can say that she remains affectively wedded to, yet suspended or stuck between those powerful assumptions about welfare-through-protection that both compel ‘overprotective’ practices and in doing so, mediate the child’s participation as an absent presence. In that sense she is voicing her paradox by critically reflecting, very strongly as her language indicates, on the very
practices of (not) listening to children’s ‘wishes and feelings’ that would have been so familiar to her. Indeed, these practices serve to aggravate the paradox because they serve to set her up for direct challenges from the children she is trying to support. In this sense she is highlighting how she cannot really ever have won because adopting good institutional (but over-protective) practices meant she must apply those very practices she expresses as more questionable. Read this way, Laura knows she could not escape the paradox, which leads her to resignedly accept the inevitability of feeling caught out ‘I suppose I have had quite a lot of those experiences over the years’ (line 8).

The glimmer of ‘could be otherwise’ quality (Wetherell, 2012, 15), is perhaps most visible in Laura’s sigh (line 7) towards the end of this excerpt; in that moment of hesitation, which might have marked an attempt to investigate other practice trajectories or curse the system further. Instead, the sigh serves to mark the chasm between her hopes and the reality that marks ‘those experiences over the years’ (line 8) as affective episodes. The sigh exemplifies what she still feels unable to put into words, even now, after she has left the arena of public law proceedings and could speak more critically perhaps about what she perceives is not ‘bloody fair’ (line 5). In that sense, the potential consequences of her anger and frustration are yet to be articulated. This is another example of homeless affect where even after she has retired, she feels unable to object and instead simply sits with the feeling that things are not right with this practice; burdened with a discomfort she can now address (as her outburst shows), but that she has had to sit with resignedly all her career where she was compelled to experience the heat of the liminal hotspot again and again.

I sensed that her pause at the end (erm… line 9) signified her intention to move on and was intended to communicate an impasse where she had nothing left to say and perhaps felt there was nothing she needed to hear: it is what it is.

This next extract comes from a longer account Trudie, a barrister, gave as an example of her experiences where she or another professional involved a child in their own proceedings beyond representation through their Guardian. In common with many professional participants in this study, her example also illustrated how difficult just doing her job of representing children
can be. As Trudie illustrates here, representing a Gillick competent child means spending time in her role as the child’s barrister taking instructions about her child client’s experiences, which means getting to know her well. She finds this emotionally exhausting because by doing her job, she ends up investing in this child client and in trying to fix her situation, realizes only in hindsight that saving her is quite untenable:

Extract 38: Trudie

1. The awful thing is when you do these Cons\(^59\) you get to know them
2. and I mean, she had so many plans […] all gone… all gone. There’s
3. only so much… you have to not get too involved and step back and think
4. ‘there’s only so much you can do’, because you can’t go out and save the
5. world for them. You can only do what you’re tasked with doing […] I actually
6. thought ‘I’ve had enough’ because, yeah… it was really hard to take… really
7. hard to take… and I thought ‘if you’re gonna stay involved doing this job
8. you’ve gotta not get so involved, because you won’t make it. You’ll just
9. exhaust yourself and you’ll not make it. It’s not that I don’t have the same
10. feeling about it but I try and keep it all on paper but with her, I kinda felt very
11. much like… I hadn’t adopted her but she was my… erm I was gonna save
12. her, you know? Ridiculous, I know! (laughing).

Despite her framing herself as a consummate professional who knows the boundaries around which she must practice (‘there’s only so much you can do,’ line 3 and ‘you can only do what you’re tasked with doing,’ line 5), what she describes here is the case that reminds her of the dangers of what can happen when she has not, in her view (offered in hindsight), adhered to those boundaries. This is borne out by the constant discursive push and pull where despite knowing ‘to not get too involved and step back and think,’ (line 3) she seems compelled to an opposite almost utopian course of action where ‘I was gonna save her, you know?’ (lines 11-12). The problem Trudie faces, as she very candidly admits in this interview setting, is that professionals are set up to be affected by representing child clients. This is because they are

\(^{59}\) Barristers refer to a meeting with a client as a Conference, or Con (abbreviated)
forced to cross that professional/child divide by spending time with them, to gain their trust and to understand about their experiences (‘The awful thing is when you do these Cons you get to know them,’ line 1) but in the process learning about them and relating to them as people more generally (‘she had so many plans,’ (line 2). In that sense, Trudie is drawing on the discourse of ‘the ambiguity of childhood’ as she wrestles to re-contextualise her practice around a real live child. Indeed, Trudie reveals the depth of her investment where, near the end of this passage she eludes to the maternal-like quality of their attachment. She just manages to hold herself back, and thinks better of finishing her sentence ‘I hadn’t adopted her but she was my…’ with ‘child’ or ‘my responsibility’ (line 11), implying she might not yet be ready to confront ‘what’ this client really meant to her. When considered in this way, it is perhaps unsurprising that professionals find it so very difficult to carry on as the consummate professional but are nevertheless compelled to do so. This goes to the heart of why it is professionals are stuck because they have to engage and relate with children in order to form a working relationship that instills trust and lets them do their job, but in doing so, open themselves up, as human beings to becoming involved and invested. However, rather than blame a system that sets professionals up for such situations, Trudie blames herself. It is her responsibility that she was unable to harness her feelings and tread that very difficult line. This is the liminal hotspot that makes it ‘really hard to take … really hard to take,’ (lines 6-7) because in order to represent her child client, she has to explore those difficult childhood experiences that are the reasons all the professionals are in Court in the first place. In that regard, it could be argued that it is asking the impossible to expect professionals to remain detached and unaffected. All Trudie can do to insulate herself from the heat generated by the hotspot is to consciously check that her head rules her heart, which she describes as ‘keep[ing] it all on paper’ (line 10).

Perhaps in an attempt to hide her discomfort about a case where she feels she made mistakes, and simultaneously re-exert her professionalism, she shirks off her experiences as ‘ridiculous’ (line 12), laughing it off as silly and unprofessional, implicitly blaming herself for, in hindsight, not getting things right. She retreats again, with her feelings, behind the position of the consummate professional, who can be relied upon to ‘keep it all on paper’ and show no professional fragility. Perhaps for a moment however, Trudie found in the confines of an
interview between professional colleagues, an opportunity to address, engage with and discuss what we both know, but usually find unprofessional to admit, is that working with children to facilitate participation can be (and indeed the system demands it) personally engaging and deeply affecting.

Discussion
In this section I have looked at occasions when professionals have talked about the discursive challenges involved in actually engaging with children by supporting various versions of participation. Laura spoke about ascertaining children’s ‘wishes and feelings’ in her (former) role as a Children’s Guardian. Kim spoke about supporting children to attend a Judge’s Meeting with Children in her role as the children’s Social Worker and Trudie spoke about working with a Gillick competent child so that she was equipped to present her child client’s case in Court. However, what these extracts reveal is how professionals become as stuck supporting child participation as I found they were trying to resist it. In that sense, supporting children to participate in their own proceedings is as problematic for professionals as trying to speak some versions of it out of existence.

These accounts serve as sobering reminders of the pervasive nature of the paradoxes across this arena. It is not just in thinking about practising child participation that professionals feel inter-related elements such as child protection and child participation that seem congruous in isolation, become contradictory and antagonistic when placed in conjunction. Their struggle in practice demonstrates how very challenging and overwhelming navigating such a complex and uncertain landscape can be. This is what makes the paradoxes so problematic, because they appear so very inevitable and inescapable. They are simply part of doing the job and as such, the paradoxes are inherently systemic or structural. In this sense, it is the system that sets professionals up to feel so professionally fragile and uncertain about what they are doing. Indeed, it is also the system that sets them up to try and fix the unfixable in the only way they can and that is to take personal responsibility for their predicament.
The sense of being trapped in these enduring tensions, paradoxes and liminal hotspots also speaks to the complex hierarchies operating within these professional contexts. As we saw, professionals can go to significant lengths to justify their practices, and in so doing take the blame for being stuck or feeling as if they have made mistakes. Laura soothes herself with the fact she had no choice. She had to limit what children said and could be heard to say because that is how she had to practice to comply with the Law and professional Guidelines. Trudie and Kim blame themselves as ‘ridiculous’ or naive.

But glossing over these paradoxes comes at a cost. Given the paradoxes are, as we have seen, inherent across child participation practices, they will inevitably confront them time and time again. Thus professionals who support child participation are set up to experience the repeated and paradoxical collapse of their own professionalism. In this regard, we have seen how such experiences can shape how professionals feel about and approach the issue of child participation into the future. Trudie decides to try harder to remain objective and ‘keep it all on paper’. Kim decides to prioritise other versions of safer participation such as writing letters. Laura pressed ahead even though it meant she frequently found her practices challenged by those they were intended to benefit.

Importantly, however within existing systems, those who are charged with supporting child participation cannot avoid the homeless affect these practices cause. This is because they must practice the way they do to make the system work. But this means professionals have nowhere to direct the feelings of professional fragility that accompany those practices and thus no way to address them, but also no way to avoid them, it seems even into retirement. They will always feel awkward and embarrassed and blame themselves, because they cannot change how they practice. They can make slight adjustments, but the homeless affect, will always linger, in the paradox of trying to make what feels wrong, feel right. As a consequence professional experiences of child participation can never feel really satisfying.

7.2 The Affective Practices of Proceedings-Experienced Participants
In this section I address the discursive challenges proceedings-experienced participants faced in realizing meaningful versions of child participation as revealed in their expressions of affect under the terms ‘The Burden of being Rescued from Participation’ and ‘The Burden of Participation: The Tricked and Trapped.’ In other words I am bringing attention to the affect of the discursive paradoxes proceedings-experienced participants attempted to confront when trying to participate or secure professional support to participate in their own public law proceedings.

7.2.1 The Burden of Being Rescued from Participation

I use term ‘The Burden of Being Rescued from Participation’ to explore how the dominant welfare-through-protection discourse operated to tightly hold proceedings-experienced participants within the discourses of the ‘Essential Child’ or ‘Care Proceedings Child’ discussed in chapter 5, as revealed through their expressions of affect. In this regard, this term encapsulates the anger and puzzlement of proceedings-experienced participants in relation to decisions that were taken to limit their participation to protect them but were perceived as so oppressive that it felt as if they had been prevented from participating in their proceedings in any way at all.

As Vicki makes clear in this next extract, worrying about the potential damage caused by hearing information about her in Court pales into insignificance next to the momentous consequences she has to live with, forever, because life changing decisions were made about her in her absence. What is difficult to annotate or encapsulate in this data is the trembling in her voice, where I gained the impression that if she had not shouted out certain words (in bold), she may have become tearful. The conversation from which this extract is taken arose when I asked Vicki whether she thought professionals had good reason to keep her away from Court. Before I was able to reference protection explicitly, Vicki cut across me and said:

Extract 39: Vicki

1 Innocence! They say, ‘innocence is bliss’ but I think… knowledge

2 can hurt… but I think ‘it’s your life. The decisions are about you.’
Anyone can get upset from a Court case… you know? Someone might get a fine on a train and that might be enough to set them over the edge… and this isn’t about a fine… this is about the rest of your life and I think… It’s like it’s all a big secret (1 second) big lies… and secrets behind your back. And how are you ever gonna trust someone? How are you ever meant to trust anything or anyone if that has gone on behind your back and you then find out all this stuff? You know? They could at least explain stuff, you know?

By immediately touching on ‘innocence’ (line 1), Vicki hints at how she feels being on the receiving end of the ‘Essential Child’ discourse. In that regard, the slip from the common idiom ‘ignorance is bliss’ to ‘innocence is bliss’ (line 1) perhaps demonstrates how easy it is to reinterpret or conflate ignorance as something virtuous and thus something that others wish to totally protect. It also resonates with the idea that ignorance keeps children in a state of perpetual innocence, or that in a state of blissful ignorance, children cannot be in charge. In either scenario, what is inferred is that she knows professionals justify their decisions as necessary to protect her from knowing things that might cause her harm, when really she feels excluded and patronised.

But as Vicki forcefully points out, even though ‘knowledge can hurt,’ (line 2), this needs to be placed in context. In that regard, she draws on the discourse of the ‘Pragmatic Child’ to draw attention to her legitimate frustrations. What frustrates Vicki is the lack of emphasis that is placed on the importance of having knowledge in the context of the big decisions, which are being made ‘about you,’ and about ‘your life’ (line 2). It can be inferred that in the context of ‘your life’ and ‘you’, that she shouts out, expecting to have information so that she can feel included in decision-making processes about her, is a very modest and reasonable demand.

The discourse of the ‘Pragmatic Child’ also provides her with the platform from which to highlight the irrationality of trying to exclude her on the basis that her participation would distress her. This is because ‘anyone can get upset from a Court case,’ (line 3). The implication might
be that if everyone is upset by Court cases, then why do we have them. In any event, these words were said forcefully and in a way that felt to me like she had made this point many times before, perhaps in trying to hammer home the importance of being informed. I gained the same impression about her example of the fine (line 3-4); that she had used this illustration before to re-emphasise her point, possibly directly to professionals, that it is simply not justifiable in the context of ‘the rest of your life’ (lines 5-6), to take decisions to shield children from information. Interestingly, her anger speaks to the sheer madness of shielding children from their own participation. What is clear here is that those decisions that were meant to protect her still constitute a huge breach of trust in her eyes. Years after the experiences about which she is speaking, Vicki still frames these decisions as ‘big lies – and secrets behind your back’ (lines 6-7). In that sense these decisions have crossed a serious line for Vicki, where shielding practices have become extremely harmful for her, into the longer term: ‘How are you ever meant to trust anything or anyone..?’ (line 8).

We can see that her frustrations are compounded here by the fact that she has found out ‘all this stuff’ (line 10) anyway. The implication is that everything has been in vain because in the overall context of her life, these professional practices have only served to postpone the inevitable. Perhaps in a way finding out later has compounded the problem for her because it has served to reinforce the fact that before, she was living a lie.

So, here Vicki is expressing the paradox that shielding children from trauma is both an impossible task and moreover one that achieves the opposite effect. This awareness is what suspends Vicki in the liminal hotspot because she is aware that if they had only just explained things, (‘they could at least explain stuff, you know?’ line 10) all of this could actually have been avoided. She expresses this with a modest sentiment; she is not asking a lot, they could ‘at least’ explain. Understood that way, protection-focused practices are framed as anything but blissful. They are framed as an unnecessary long-term burden because they cause long-term trauma.
This next extract comes from my interview with Cora who remained in foster care at the time of our discussions. Here she responds to my question as to whether she felt it was right for professionals to take decisions during her proceedings (three years previously) that limited her participation to speaking to professionals and writing to the Judge. What was notable about Cora’s talk here was her agitation, anger and confusion at being protected by being prevented from participating, when previously she was left to cope with events that were very harmful to her without any protection:

Extract 40: Cora

1. Well, (1 second) not only have I had to live through all of this and go
2. through Court Hearings, but I’ve been through a lot of other stuff
3. that I have just had to grin and bear… so I don’t see why this is the
4. one issue where everyone’s trying to be over-protective and say ‘no,
5. you can’t really get that much involved’ and so… what I have to say
6. isn’t really taken as very important (deep sigh or groan).

In common with Vicki (extract 39) Cora questions why keeping her away from her Court proceedings is ‘the one issue’ (line 4) that drives professionals to be ‘over-protective’ (line 4) especially when these practices are placed in the context of ‘a lot of other stuff that I have just had to grin and bear’ (lines 2-3). In that sense, Cora is calling out these protective practices informed by the ‘Essential Child’ discourse as deeply inconsistent, which makes it doubly confusing as to why this issue is the ‘one issue’ where she feels the full weight of being protected. When placed in that context, she implicitly draws on the discourse of the ‘Pragmatic Child’ to demonstrate how speaking to the Judge, will not contribute significantly to the harm she has already experienced, in her view. Indeed, as she implies, being kept away from her own proceedings, does not actually shield her from the proceedings anyway. She still has to ‘live through all this and go through Court Hearings’, (lines 1-2) whether she is there or not, implying that for her, the problem has not gone away.
Importantly, and what Cora hints at here is that by making it so difficult for her to participate in her proceedings, she feels her influence over her proceedings is limited: ‘what I have to say isn’t really taken as very important,’ (lines 5-6). In that sense, burdening her with protection now by restricting her participation ends up exacerbating the harm she has suffered, as it limits the importance of her views. Read this way, Cora’s talk reveals how being subject to what she perceives as deeply inconsistent protection-focused practices means these belated attempts to protect, indeed over-protect, are unhelpful. The deep sigh, or groan at the end of this excerpt might be a way of articulating the burden she associates with over-protective practices that mean what she says does not and indeed, cannot count for much anyway. She can no longer express her frustration in words about being positioned as the ‘Care Proceedings Child’ who is considered too damaged to be supported to speak and express views about their experiences. Alternatively, it might illustrate the liminal affect of being caught in practices that seem so simple and obvious to her to sort out, but which appear so difficult or hard for professionals to change. In that sense she remains stuck with the thought that if she had been able to be more involved, the longer term consequences of feeling unimportant and silenced could have been avoided.

**Discussion**

One of the advantages of looking at affective practices in public law proceedings is to examine power dynamics, which as we saw in chapter 6 were described by proceedings-experienced participants to be at their most extreme when child participation was re-formulated as professional participation. In that regard, examining how those participants were affected by the grip of pastoral power that simultaneously serves to rescue children but then limits their access to some versions of participation is important. This is because, as illustrated by the extracts in this section, being discursively rescued was perceived as shaping practices that hindered their participation and stifled their influence over decision-making, which was, by implication, important to their wellbeing. In Vicki’s case being kept ignorant throughout her proceedings operated so as marginalize her both from her own proceedings but also from mainstream life into the long-term, processes that she expresses fervently as intimately harmful. Cora’s frustrations were associated to ‘over-protective’ practices that took away her ability to influence decisions about her own life. She highlights how attempts to protect her have been inconsistent and by implication, un-protective and do not warrant belated forms of
over-protection that restrict her ability to speak. These responses are interesting because in
drawing a red line, these participants set themselves up in a way to experience these perpetual
affective states. Their awareness that shielding them from their own proceedings was a by-
product of being rescued generally does not help them.

That these participants carry this affective burden for years after their proceedings were
concluded, reveals the enduring, paralyzing and detrimental affect they associate with this kind
of rescue. They cannot move on because they are caught up by the consequences of practices
that were intended to do good, but that ultimately and inadvertently did harm. As a result, they
remain stuck in an enduring tension or liminal hotspot reviewing what happened and how things
might have been different for them, but knowing they cannot move on because they will never
know what difference their contribution might have made to the outcome of their case and the
difference this might have made to their lives. When affect continues to linger and vacillate in
the push and pull that these participants describe, it risks becoming permanently displaced, or
homeless (Kofoed & Stenner, 2017). They cannot address this affect because the events to
which they speak are over and the decisions made. All that is left is the lingering discomfort
about something they should have but could not influence.
7.2.2 The Burden of Participation: The Trapped and Tricked

In the previous section I explored how proceedings-experienced participants expressed feeling excluded from participating in their own proceedings by being subjected to what they perceived as overly-protective practices. In this section, I explore examples of what it meant to proceedings-experienced participants to feel instrumentalised into versions of child participation that did not meet their expectations, which I have organised under the term ‘The Burden of Participation: Tricked and Trapped.’ Consequently, I use this term to convey the frustration and anger proceedings-experienced participants expressed about feeling instrumentalised by a system that took what it wanted but gave nothing back. The examples I examine all speak to occasions where participants perceived being lured into processes through an implicit expectation that their participation would be beneficial but turned out not to be. This is because they felt swept along trapped or locked, into unhelpful versions of participation that were not experienced as empowering or helpful. So paradoxically, those exact same discourses around voice that these participants perceived were geared up to empower them and support their attempts to contribute to and influence decision-making in ways that they believed were in their best interests, were perceived as making their predicament worse.

As we shall see in this next extract, Hope’s anger was directed at practices where she believed professionals can record whatever they want about children, even when children feel this is inaccurate and selective, and traps them in the wrong story:

Extract 41: Hope

1. We always thought this was an injustice, do you know what I mean?
2. You know, ‘any of you can write whatever you want about us and we
3. don’t even know if it’s true’ and remember, part of it is people’s
4. judgment and I used to get really angry about it, especially people’s
5. log books, you know? It had been written by the social workers for
6. your files and you’d be so angry because you know ‘you are gonna say
7. you did this and then you’re gonna say I did that’ and you know the
8. social worker’s only going to believe what they have put in that and
you'd be so angry. But the thing about being in care is that you have to ... you have to accept it, but you don't really accept it. It just adds to your anger.

Across this extract, Hope hints frequently at the insidious nature of practices that allow professionals to let children speak about their views but then write ‘whatever you want about us,’ (line 2). In highlighting that 'part of it is people's judgement,' (line 3) Hope alludes to her worries about how professional opinions might not really reflect her own opinions about her case or impressions of her. Whilst this might not in and of itself be problematic, what Hope objects to is that information that goes on record is put there without her being able to check it or consent: ‘we don't even know if its true,’ (lines 2-3). This implies that these ‘opinions’ are on record and cannot be changed even when as Hope perceives it, they amount to an ‘injustice’ (line 1) and make her ‘really angry’ (line 4). They have the potential to harm the children they are intended to help, in her view.

The most insidious aspect of these practices for Hope, is that writing these opinions in ‘people's log books,’ (lines 4-5), changes the status of those opinions to fact: ‘you're gonna say you did this and then you're gonna say I did that’ (line 7). These are practices that Hope describes as very difficult to challenge because no matter what children say, ‘the social worker's only going to believe what they have put in that,’ (line 8). So, when Hope expresses her anger (she speaks about her anger four times in this extract – lines 4, 6, 9 and 11) she is highlighting how her participation in meetings with professionals, occasions that she expected to be empowering and beneficial for her, turn into something more sinister. She traces how speaking actually separates from her own story, as the professionally-written records speak more powerfully but crucially in her view, and as she suspects, less accurately than she is permitted in person. In that sense, she describes being swept along by processes she cannot influence and cannot change but that may cause serious harm when what has actually been recorded might end up at odds with her own version of her ‘wishes and feelings’. The implication here is that Hope felt tricked into colluding with practices because they seemed to offer opportunities to speak. However, her very speaking meant that she lost ownership of her own experiences, and
potentially weaponised her own experiences against her. In this sense, Hope is expressing her frustration and anger at being framed the ‘In/Audible Child.’

Crucially, these practices are problematized as affective tensions facing all children in care (‘we always thought this was an injustice,’ line 1). This is important because it suggests that it is the status of ‘being in care’ (line 12), that means children have no choice: ‘you have to accept it,’ (line 10). In that sense, Hope speaks to the sense of being trapped into processes, that are difficult to challenge, and indeed, difficult to avoid.

Looking at this extract from the perspective of someone who is speaking about these events 30 years after they happened, we gain a sense of just how deeply she still feels trapped in the stories created about her in the logbooks. As she recognises, there is no way for her to put the record straight (‘but you don’t really accept it. It just adds to your anger’ lines 10-11). Interestingly, these are stories about her that might be long forgotten by the professionals who wrote them and in that sense are only kept alive by those who they still infuriate: the (former) children in care. In that sense, Hope cannot address the homeless affect caused by being unable to change her experiences where she was compelled almost to speak but to accept that she will not fully be heard. Thus, the on-going trauma caused by practices designed to support children in conveying their ‘wishes and feelings’ becomes very explicit. As Hope suggests, these practices paradoxically leave those regarded as most vulnerable, trying to make sense of how speaking to professionals, which they expected to be empowering and helpful, could leave them feeling more misunderstood and angrier. Understood this way, what Hope is suggesting is that these practices contribute to children’s vulnerability.

This next extract comes from my interview with Kaya, who is explaining to me how the momentum that gathered around her, following a discussion she had with a staff member at school, resulted in unexpected consequences as she ended up talking to the police (referred to by Kaya as ‘polices’). As is clear from the extract below, instead of feeling empowered or helped by this process, she felt ‘they’ (the professionals) took advantage of her. So, instead of feeling relieved that everything that happened to her was out in the open, she attributes her
predicament to professionals who tricked into speaking and thus inadvertently into co-operating with a process that swept her up and carried her along at a pace and in a direction that she did not want to head:

**Extract 42: Kaya**

1. They do it too fast and they don't really talk to you about it and like
2. …the things that they do are kind of irritating (1 second).
3. Sometimes they get polices [sic] involved and in my opinion (2 seconds) I think that's a bit too far because they didn't really talk to me about it and… you know… talking to polices is, like, … in like… you know, in those rooms they're kind of like… you feel like
4. the light is all on you… it's a kind of anxious… kind of thingy'.

Kaya’s impression of professional practices, designed to protect her, as something ‘they do [it] too fast’ (line 1) where ‘they don’t really talk to you’ (line 1) suggests that she felt caught off guard and tricked into participating. In that sense, she is suggesting that her agency had been seriously compromised: she had very little time to think about what was happening and she was also ill-informed about what was expected of her through her participation. Nevertheless by describing her treatment in these processes initially as ‘kind of irritating,’ (line 2), she gives the impression that what professionals initially did was bearable. Where she feels tricked, is when things go ‘a bit too far’ (line 4). These words mark the prelude for a version of participation she implies is unhelpful and unwelcome, because it simply swept her along and made her the focus of unwanted attention. Kaya’s description of talking to the police as being ‘in those rooms’ (line 6) where ‘you feel like the light is all on you,’ (line 7), is more evocative of a suspect interrogation than a witness interview, which is likely to be what her participation was. Her description of the lights on her certainly conveys the impression that she felt intimidated and anxious about this; as if she were in trouble. So, instead of feeling cared for and protected by those processes designed to keep her safe, she speaks to the discursive paradox in that her participation left her physically but also emotionally vulnerable: ‘it's a kind of anxious… kind of thingy’ (line 7). In this regard, Kaya again conveys her lack of agency as she is suspended
between the paradoxical collapse of her expectations about what her participation would achieve: tricked into thinking her participation would empower her but then trapped to participate in ways that affect her welfare detrimentally.

This next extract arose in the course of my interview with Layla, a participant who was living in foster care at the time. When responding to my question ‘what does ‘taking part’ mean to you?’ she drew on her own experiences of giving her ‘wishes and feelings’ to professionals who came to speak to her again and again during the course of her proceedings. In doing so, she drew attention to the emotional exhaustion it caused her to participate in a fragmented process that took more from her than it gave back. In this sense, she felt tricked into working quite hard for the professionals and giving more than was helpful to her. She supported them the professionals instead of them supporting her:

Extract 43: Layla

1 Layla You’re putting your two pence in, if that makes sense
2 ...I feel like I was just putting something in that I didn’t need to anymore. It’s like you’re overdoing something
3 if that makes sense... like you’re over-pouring... like,
4 so, say like you’re giving out money to the billionaires
5 all the time, like, to the same person over and over, so
6 ...if that makes sense?
8 Sara So, like you’re saying the same thing again?
9 Layla Yeah!
10 Sara So, is that what it felt like when you were doing the Court stuff?
12 Layla Yeah, cos sometimes it felt like I was talking about it too much as well. Cos I was like ‘I wanna think about
13 school. I don’t wanna keep thinking about all of this.’
Whilst the act of ‘putting your two pence in’ (line 1), means ‘having your say’, in this context, it also conjures up impressions of traditional slot machines in penny arcades where people try their luck on a game of chance. Taking a chance with two pence constitutes little risk, which may reflect how Layla wants to be able to exercise agency in her situation: do your bit and then walk away. So, where the Court proceedings are concerned, she adds her two pence and steps away, hoping to limit the risk to herself. However, given her experiences that professionals will call on her to provide ‘wishes and feelings’ repeatedly as and when they require, she is actually prevented from stepping away and thus kept available for updating discussions. In that sense, her ability to exercise agency is very constrained, which evokes a sense in her of her participation being controlled by others. Thus, she describes ‘putting your two pence in’, as turning into acts of repetitive giving that are ultimately arduous and dissatisfying for her. This is reflected by the strain she describes is caused by participation that makes her do more than is personally comfortable, implied by ‘overdoing,’ (line 3); ‘over-pouring,’ (line 4); ‘giving out money […] all of the time’ (line 6). What she conjures up is a complex image where the repetitive, and overwhelming nature of the giving she is doing, makes it impossible for her to do anything else: where thinking ‘about all of this’ (line 14) prevents her thinking about other things and getting on with her life. Layla’s use of monetary metaphors makes explicit that she feels, as well as being onerous for her, it is also really quite unnecessary as the ‘billionaires’ (line 5) are rich enough that they should not need to keep her over-pouring. Indeed, these processes take a significant toll for Layla as she makes explicit that even anticipating her next over-pouring prevents her from getting on with her life (‘I wanna think about school. I don’t wanna keep thinking about all of this,’ (lines 13-14).

What this extract illustrates is the unfairness or inequality Layla associates with a fragmented type of participation, that functions so as to incessantly seek children’s ‘wishes and feelings,’ while not giving anything back. The system trapped her relentlessly into processes that fed the legal process with what it needed to function, with little or no benefit for her in her repeated ‘giving’. Indeed, her participation has become a burden because it is not empowering or beneficial but something that has trapped her in unhelpful processes that prevent her focusing on her own welfare, by for example, prioritizing her schooling.
This final extract is drawn from quite late into our interview, when Vicki was responding to my follow-up question about the extent to which she agreed it was important to protect children from having information that professionals might feel is harmful to them. Her response is entirely focused on how detrimentally she was affected by being caught up in processes where professionals could have given her information that would have helped her make sense of her situation, but did not. Indeed, she reports being so distressed about being deprived of information that she used to wish in hindsight that she had never reported her situation at all, even if that meant remaining potentially unsafe at home instead:

Extract 44: Vicki

1 Everyone needs a version of what’s going on, you know? […] I think
2 the confusion hurt me more than anything. I didn’t know what was
3 going on. I used to go to bed crying and wishing I had never told
4 social services. I didn’t know what was going on and I wish (tapping
5 arm of chair on every word to end) I had known what was going on.

Re-framing information or ‘a version’ (line 1) as something ‘everyone needs’ (line 1) re-constitutes its status as a basic human right and, like other human rights, as something essential to human life. Implicitly, knowing what is going on is framed as essential to being human. Importantly, Vicki makes clear that having ‘a version,’ is what is essential. The version does not need to be a factually accurate or even complete version; just a version of what is happening. What she expected is that an effort would be made to help her make sense of the confusion. That is her red line, which is not asking a lot. Therefore, having no ‘version,’ suggests that Vicki has lost something very integral to her identity and in that sense been tricked. So, by reporting her situation to social services she has inadvertently given up her old version (she realizes in hindsight) and has not been provided with a new one. She makes sense of being kept in the dark as being deliberately kept from having a new version. Indeed, had she known speaking out came at the high price of being left in this state of ‘confusion,’ (line 2), for which she implicitly blames professionals, she would rather take her chances at home (‘I used to go
to bed crying and wishing I had never told social services,’ (lines 3-4). Thus, encapsulated in
the mantra ‘what was going on,’ which she repeats four times across this short extract of text
is her sense of desperation at being deprived a version and moreover believing that she was
deprived deliberately.

Tapping on the arm of the chair as she spoke underlines the importance to her of knowing (line
5) because by not knowing, Vicki was caught up in a liminal hotspot, trapped interstitially
between her old life that has gone and a new one that she still could not picture or make sense
of due to lack of information. At least previously Vicki had ownership of her sense-making
around her experiences, which she lost when care proceedings began. Now she feels that the
professionals hold ownership of her experiences as they control the information and what can
be done with it, which includes not even having enough information to invent her own version,
thereby destroying any possibility for her to develop any coherent identity narrative and setting
her up instead for the crisis of discovery.

It is not clear from this extract whether Vicki ever did find a version that helped her understand,
albeit after the event, ‘what was going on’ (line 5). What we do learn however is that the
memories she associates with the confusion of not knowing remain very real for her and affect
her deeply, years later. This is illustrated by her use of a raised voice (written in bold), and the
tapping on the chair. Tapping every one of the words ‘I wish I had known what was going on,’
(lines 4-5) really does emphasise how desperately she still wishes she had been given
information. But once again, there is very little Vicki can do with the negative affect caused by
the liminal hotspot I discussed above. She finds herself trapped with the homeless affect of
being unable to address what happened to her, but being unable or perhaps unwilling to really
let go.
Discussion

In contrast to the previous section where I focused on extracts where participants felt excluded from participation and thus felt they could not influence the decision-making processes at all, here I focused on extracts where participants expressed what it felt like to engage in participation practices that were supported by professionals, but not in ways that met their modest expectations. The descriptions these participants gave of being given a voice are resonant of the ‘In/Audible Child’ discourse in that that participating within the remit of the support that was given was not in itself helpful, indeed to the contrary. It seems the situation for each participant became increasingly unbearable as a direct result of being supported to speak but only in ways that they perceived restricted their agency and ability to participate in the decision-making processes about them. Instead of receiving the benefits they expected of being heard and having a voice, they expressed feeling tricked and trapped into versions of participation that were not beneficial for them. So paradoxically, it was actually being heard and indeed, being supported to be heard within the remits of current practice, that proceedings-experienced participants described as detrimental, each in their own way, highlighting the significant cost of speaking.

In that respect, we can see that the welfare benefits professionals link with the more limited and restricted versions of participation (that they are in consequence more inclined to support) are not ideas these participants share. Indeed, they associate their limited and carefully regulated positioning within discourses of voice and listening with detrimental consequences to their welfare. This is revealed by the unfulfilling nature as expressed in their affective talk, that none of them perceived their participation as providing opportunities to be properly heard, understood and informed. In fact they perceive their participation as tricking them into versions of participation that are deeply unhelpful but seemingly inescapable. Indeed, participants perceived they had lost ownership of their very own expectations of participation. This was perceived as very detrimental to their welfare because it affected how they understood they were portrayed both in the short and the long term because they had to live with the consequences of their own participation. In that sense, these participants are drawing attention to another paradox of participation in that they problematize those very versions of child
participation that professionals perceived as the least damaging to children. Paradoxically then, those very restrictive practices of child participation cause the very harm they were designed to avoid.

In following Foucault, it is possible to see how bio-power and pastoral power operate to restrict or limit what children and professionals can talk about, and how. In that sense, these participants highlight how being expected to give, with no in-built processes by which professionals can give back, can be very detrimental. This resonates with what proceedings-experienced participants highlighted was harmful about other versions of participation we discussed in chapter 6, notably when Cora spoke about the harm it caused her to not even be worthy of the courtesy of a response to her letter or an explanation as to the influence of its content. What we see across these extracts very clearly is how affected children can be by practices that they understand as tricking them to participate in a system that can take what it needs but then function without them entirely, and indeed does so, because that is assumed to be most beneficial for them. In fact, it appears that it is the very lack of relational opportunities in practice that these participants described as so unhelpful because it took away their opportunity to choose to be part of those processes or indeed to decide how they might best use those opportunities to influence decision-making processes.

The memories of child participation in their own public law proceedings continue to haunt these participants, as revealed through their ongoing anger, frustration and despondency where they review how they could have fallen for these tricks. When analysed through a lens of liminal hotspots, what these participants are voicing is the affect of being caught up in processes that they expected to be beneficial and helpful but turned out to be counter-productive, all the while feeling they are in some way to blame or are responsible for how events have transpired. What perpetuates the paradox is that there is no way for these participants to make their views about their experiences work for them; not then and not now. They remain caught up in the homeless affect of being unable to address the affect caused by their participation but being unable to correct or change it.
CHAPTER 8 – THE PARADOX OF PARTICIPATION: CONCLUDING OBSERVATIONS

Introduction
Over the course of my thesis, I have investigated how children and professionals make sense of child participation in public law proceedings. I have explored why, given the concerted drive to involve children in decision-making processes generally, very few children actually participate in what they perceive to be meaningful ways when it comes to decisions about their removal from their families. As part of that process I have looked at contradictory discourses around childhood as a time of protection (innocence, incompetence, dependence) and as a time of participation, (children's rights to participate, voice and competence/agency). I have also looked at how dominant and hegemonic discourses about childhood underpin the incompatibility of the notion of participation with the notion of protection and the consequences this has in practice. In demonstrating the paradoxicality of the practices that are shaped by these discourses I have highlighted the distinctly personal cost for professionals and children alike.

Foucault’s work on power and knowledge has been an important tool of analysis for me because it has enabled me to examine those taken-for-granted assumptions about childhood that reproduce and perpetuate some versions of child participation instead of others and as a consequence, highlight the material and affective consequences of discourse for children and professionals more keenly. Further, by drawing on Foucault’s ideas I have been able to peel back the layers of power in which professional practices are also embedded, and as a result, shed light on how professional practices in public law proceedings have unhelpful consequences for them as well. In that sense, I have demonstrated how professionals are also very powerfully subjected to the effects of disciplinary power, bio-power and pastoral power.

Although I had not originally planned to research affect, it emerged as a key focus during data analysis. Exploring its role in professional and child participants’ accounts of child participation in public law proceedings has allowed me to focus on why child participation is often framed as
such a difficult and unsatisfactory aspect of practice. As a result, I have been able to
demonstrate how very viscerally participants react to the idea of some versions of participation
and how those affects linger, detrimentally for all.

In this final chapter I provide an overview of my findings and the contribution this research
makes to the academic literature around childhood and participation. I then highlight the
implications of this study for policy and practice as well as considering future research
opportunities in this field.

8.1 Overview of Findings and Contribution to Knowledge

I set out below a summary of my findings, in relation to the Research Question they address:

1. How and to what effect do professionals construct ‘childhood’ and ‘child participation’ in public law proceedings?

We already know from previous research that the discursive paradoxes that confront
professional participants in Children Act work are driven in part by the images of childhood that
they have in mind when engaging conceptually and practically with child participation (James
& James, 2004; Birnbaum & Sani, 2012; Alexander et al, 2016). In this respect, my research
both confirms and expands that finding in that my professional participants also demonstrate
how they are deeply influenced by and wedded to those welfare-through-protection discourses
around which primary legislation, regulations and policy as well as ‘common sense’ thinking
about childhood in this arena is largely organised.

I also found that professionals drew on the constructions of childhood in a more complex and
broader way than has already appeared in the literature. What I mean by that is that whilst all
professional participants drew on the construction of what a ‘proper’ or ‘ideal’ childhood should
look like as a powerful professional guide to their practice (the ‘Essential Child’), they also drew
on other constructions of childhood that inverted the ‘Essential Child’ discourse. I found that,
professionals also mobilized a discourse of ultra-protection to construct the ante-Essential Child
(The ‘Care Proceedings Child’). Focusing on themselves as the ‘ultra-protector’ and the children as ‘ultra-vulnerable’ was thus a means to legitimate professional control and regulation of children’s participation and thus privilege some versions of participation, where children were less directly involved over other versions where they were. However, their discourses also suggested that these ideals could collapse in the face of conflicting personal experiences and during these times, they might dismiss or subordinate those paradoxes in favour of ensuring the illusion of a seamless professional experience (the ‘Ambiguity of Childhood’).

Across the academic literature relating to child protection there is a wide consensus that conceptually, child participation generally has a broad and ambiguous meaning (Kriz & Skivenes, 2017; Lansdown, 2010; Sinclair, 2004) and as such, is operationalised without really theoretical or contextual explanation (Vis & Thomas, 2009). The discourses I found professional participants recruited to describe child participation may help to shed light on that debate in the context of public law proceedings, anyway. Importantly, the discourses that I found my professional participants tended to mobilise, namely as an Illusion, Formulaic and a Disruption, illustrate what would commonly be understood as the key features of participation as very challenging for children in that they limit what children can say and indeed, be heard to say. In other words, wrapping those inherently (ultra)protective practices around child participation so as to avoid the more harmful aspects of what child participation could involve when children do speak and are heard to speak, served to limit child participation to what I term ‘professional participation’ (the ‘Illusion of Participation’). I also found that professionals drew on the discourse of ‘Participation-as-Formulaic’ to legitimate and perpetuate those ‘professional participation’ practices as well as drawing on the discourse of ‘Participation-as-Disruptive’ to reinforce the inevitability of ‘professional participation’ practices.

2. In relation to their experiences of being subjects of public law proceedings, in what ways and to what effect do proceedings-experienced participants talk about ‘childhood’ and ‘child participation’?
Proceedings-experienced participants perceived professionals as tightly regulating their participation and consequently as stifling their opportunities to participate meaningfully in decision-making. This reflects the findings from research in relation to private law Children Act proceedings (Cashmore & Parkinson, 2008) and child protection processes more generally (Duncan, 2019). Delving into the discursive strategies proceedings-experienced participants employed to describe participation in the context of their own experiences of public law proceedings has allowed me to prise apart the more nuanced and relational aspects of their perceived marginalisation. As discussed in chapter 6, the paradox experienced by these participants manifested in their talk about the struggle where no matter how hard proceedings-experienced participants felt they tried to speak or be heard, often drawing in very reasonable ways on discourses of voice, agency and children’s rights, they failed to achieve that version of child participation to which they aspired. Indeed, some highlighted their greater exclusion from the decision-making processes as a result. In this respect, proceedings-experienced participants showed how important it was for professionals to really relate to them and acknowledge the importance of their beliefs around participation in order for their participation to be meaningful and indeed, beneficial. This was an integral feature of all their talk, whether the focus was around professionals listening to children’s views and what they have to say about their experiences, faithfully reporting them to the Court or by informing them about their proceedings so that they could give informed views.

Yet, paradoxically, the data showed that the attempts made by proceedings-experienced participants to be acknowledged in terms of their capabilities, independence or autonomy ended up reinforcing their position as children and moreover as ultra-vulnerable children (the ‘Pragmatic Child.’). Sometimes speaking out did result in their increased participation. But it came at a significant cost because their voices were not necessarily amplified in ways that they felt were helpful to them, highlighting the very complex affective and relational activity speaking out is (the ‘In/Audible Child’). Very often, these participants felt singled out for high levels of intervention and protection; experiences that were perceived as ultimately damaging for them (the ‘Care Kid.’)
These ideas reverberated in the ways proceedings-experienced participants made sense of their experiences of participation as not providing the meaningful versions of participation they expected. What they perceived as blocking their attempts to meaningfully participate was the resistance of professionals. As a result, instead of speaking about the supportive and collaborative opportunities they had to participate (as might be expected given the range of versions of participation available within public law proceedings), they talked about their experiences as excluding them from their proceedings (‘Participation-as-Marginalising’) and focused on the damaging consequences to them when professionals did not really focus on what children said that made them feel as if decisions were being made about them based on partial, selected and subjectively filtered accounts (‘Making my Participation about Me’). By foregrounding their own experiences, these participants talked about the importance of what their participation might have meant in terms of their well-being and in that sense provided a definition of meaningful participation that, if adopted in practice, might enhance children’s welfare (‘Welfare-through-Participation’). Very much reflecting previous findings in private law research (Smart & Neale, 2000; Gollop, Smith & Taylor, 2000) in the context of public law proceedings my participants also highlighted that the purpose of their participation was not to have their way, as my professional participants feared, but was about being acknowledged as important to the decision-making process. What is also clear however is that these participants recognise they are such a long way away from achieving a meaningful version of participation that even knowing professionals have tried, even if they failed – something we know professionals also fear - might be better for them than not trying at all. This finding illustrates how very integral it is for professionals to hold in mind the spaces of possibility for children to participate rather than to act on the ‘urge to protect’ that drives them to prefer versions of ‘professional participation’ over child participation.
3. What do professional participants’ expressions of affect reveal about discourses of child participation practice in public law proceedings?

In the main, professional participants perceived the consequences for them of practising child participation as informed by the dominant welfare-through-protection discourses as deeply unsatisfying and as occasions that were fraught with risk for them personally and professionally. Indeed, their expressions of affect drew attention to how unsettled they could become even contemplating the prospect of some versions of child participation that might bring children into the Courtroom and/or into contact with their evidence. Indeed, their discomfort around practices perceived as so deeply antithetical to children’s welfare served to justify their resistance to otherwise quite legitimate versions of child participation, which they know are practised in the Family Court. Thus, these participants sat with the paradox where at least nominally they knew in every case that they should adhere to policy and guidance when they really try to keep their distance, which they described as anxiety-provoking and deeply uncomfortable (‘Drawing a Line: Wrestling the Discomfort’). Professionals were also affected negatively by their actual experiences of child participation. This manifested in their expressions of distress and frustration at the high cost involved to them in just doing their job and supporting children’s participation. They felt caught up where in trying to emulate good practice they inevitably risked their status as good practitioners because they faced the uncertainty of working in a system that offers professionals no guarantees as to what children’s participation will achieve but nevertheless expects professionals to take responsibility for how they facilitate it. There were examples in my data of these negative experiences of child participation in relation to all versions of child participation including that professionals favour most, namely ‘professional participation.’ (‘Can’t do Right for Doing Wrong’). The disappointment, shame and distress that these participants associated with these experiences lingered, reflecting the chronicity of being exposed, simply by doing their job, to the affects of their repeated exposure to liminal hotspots, which they could not address but could not gloss over. So, even though they blame themselves they cannot escape the affect of the paradox because it is their very experiences of doing their job that are making them less certain about how they can best do their job.
4. What do proceedings-experienced participants’ expressions of affect reveal about discourses of child participation practice in public law proceedings?

I found that in the main proceedings-experienced participants are deeply negatively affected (some into the long-term) by their experiences of participation. In that sense, the accounts by proceedings-experienced participants who are now adults spoke about similar challenges, aspirations and frustrations as those whose experiences were much more recent. Indeed, there was a high degree of commonality across their accounts.

Their negative experiences were wrapped around how they perceived professional practices as marginalising them, even when they appreciated that in principle, it is for their own good and in that sense, done to save them from the harm professionals fear child participation poses (‘The Burden of being Rescued from Participation’). I also found these participants to be deeply negatively affected by their experiences of versions of participation that they perceived as rigidly regulated. What was deeply troubling to them was how they felt their very participation, that they expected to be empowering, served to rob them of ownership of their experiences, highlighting the significant cost and risk of speaking out at all (‘The Burden of Participation: Tricked and Trapped’). So, in contrast to professional participants, I found that these participants sit with the paradox that comes from being exposed to practices that shield children from harm, but in the process expose them to a legacy of broken promises, regrets about what might have been and grieving for the stories and versions of themselves that they could never formulate or feel they have lost. What it has been possible to highlight as a result of broadening my recruitment criteria is how childhood experiences can be taken into adult lives, imbued with the negative/positive and enduring affects they associate with their experiences of feeling unheard, illinformed and misunderstood. These perspectives underline the point that decisions taken in childhood do not only affect people in childhood, but are carried with them, long after that stage of life is legally over. In that sense, it reminds us that decisions professionals take have implications for people long after childhood is over.
As a consequence the expressions of affect articulated by adult proceedings-experienced participants reveal paradoxically that those very child participation practices that professionals seemingly perpetuate are those that cause them long term anger and distress.

8.2 Implications for Policy and Practice

What I have learned from my professional participants is that they wrestle with how to support any versions of child participation that bring children into contact with the Court and their evidence, because they struggle to perceive those versions of participation as anything other than harmful to their child clients and their own professional practice. The harm about which they speak is more complex than simply being about traumatizing children (Vis & Thomas, 2009). It is also harmful for professionals also because in supporting child participation, professionals place themselves in a position where they are forced to face the affective toll this causes them, both in order to preserve their image and reputation as consummate professionals but also to preserve their position as children’s protectors. Investing in child participation, within the current discursive landscape, is therefore often a very difficult and frequently very unrewarding aspect of their work.

What my proceedings-experienced participants have taught me is that participation is not only important because it lets them speak and be heard (Cashmore & Parkinson, 2000). It is much more than that. It is an existential need. In that sense, if participation does not happen in a way that is meaningful for children, they are harmed in ways that professionals regularly associate with neglect or abuse. They report feeling powerless, tricked, trapped and resentful about the levels of protection professionals deem necessary and which in the process makes their active participation nigh on impossible. As has been highlighted in other research (Vis & Thomas, 2009; Callaghan et al, 2018) children who have been subjected to violence, high levels of conflict and abuse are more likely to place more significance on speaking and being seriously acknowledged, not less. This is a serious issue facing children caught up in public law proceedings, which might be remedied by looking at how participation can be embraced and facilitated confidently as a relational and meaningful practice for everyone, so it can contribute positively to children’s present and future welfare.
If child participation practices are going to work meaningfully for professionals and children, something needs to fundamentally change. Up until now, the literature on child participation in Children Act proceedings has focused on change around thinking about children as ‘social actors’, where the focus has been on promoting their voice and experiences, or on securing their rights to participation (James et al, 2004; Kosher & Ben Arieh, 2020). What my research highlights is that ideas such as incompetence/competence and dependence/agency need not be necessarily spoken about in opposition to each other. They can be spoken about as an inevitable and intimate part of the interconnection children have with professionals upon whom they rely for protection and support but from whom they also rely to participate meaningfully in their proceedings themselves. Whilst this might not be an entirely new revelation in other areas of social life, (Jans, 2004; Lee, 2001; Neale, 2004; Prout, 2005; Smith and Bjerke, 2009), it brings something new to the arena of child participation within public law proceedings.

Achieving a shift in perspective involves a commitment to dialogue about what is not working in practice and how those practices might otherwise be adapted to work better. Indeed, it is only by trying to adapt, as proceedings-experienced participants highlight, that practices might become more mutually beneficial and meaningful. Crucially, I have also shown that allowing children to contribute meaningfully does not imply that they ‘must have their way’ as professionals often fear. Indeed, proceedings-experienced-participants variously indicated that they understood the pressure on professionals working in this legal system to regulate what they could know and hear. That aside, they remained disappointed that no real effort had been made in that regard. This they felt would have made a big difference to their sense of well-being both then and into the future. With those thoughts in mind, I propose the following action points for reform, which I outline below:
1. **Participation Checklist**

As my research illustrates, professionals do not find it easy to speak to children about more active versions of participation as it means suspending their deeply held ideas about what constitutes ‘welfare’ in public law proceedings. However, in order for child participation to be meaningful and effective for professionals and children alike, there must be a move away from the primacy of welfare-through-protection discourse towards a broader definition of welfare that incorporates a ‘participation checklist.’ This does not mean that the existing welfare checklist is abandoned but that in their written reports, professionals work through their responses to a participation checklist that supplements it. Such a checklist might include factors such as:

- The child’s views in relation to their participation needs
- The support available to achieve the child’s expressed participation needs
- The timetable for meeting the child’s participation needs
- The dis/advantages this plan of participation brings to the child’s welfare
- The benefits this plan of participation brings to the child’s proceedings.
- Whether any evidential safeguards, are required, and if so, what.

What the checklist contributes, which I have found is fundamentally missing at present and which is undermining any attempts by children and professionals to negotiate more collaborative and meaningful versions of participation, is the structural framework they need that equips professionals to speak to children about their participation needs. Letting children know what versions of participation are available and what each involves, is fundamental to that process because it allows children to make informed choices about the version(s) of participation that best meet(s) their needs. Sharing adult/child perspectives about the benefits or drawbacks to each version, and the special measures that are available to support their participation, will be an inevitable outcome of that process. Indeed, these relational practices will be important for professionals to sustain throughout their working relationships with children so as to ensure professionals can respond effectively to any unexpected or necessary changes.
The checklist could also be incorporated into existing Guidance around child witnesses. By including the benefits to children’s welfare of being a witness (and by extension, the damage to the case of children not being witnesses) as part of the Re W assessment, professionals would have the mandate to speak to children about the benefits to their psychological and emotional welfare and to investigate how children might feel the Court would benefit from having access to their first-hand accounts. This approach does not replace the balancing justice/welfare exercise that is required; it merely broadens the base from current thinking about welfare-through-protection to welfare in the wider sense (see below). Indeed, these change seem important in light of the commendable efforts, led by the Bar Council and Law Society, to implement vulnerable witness training for advocates in public law proceedings and the increasing number of ‘special measures’ that have evolved across Children Act proceedings. These include but are not limited to giving evidence by video-link or having the Judge or one of the advocates ask children questions from pre-prepared and agreed list of questions. Increasingly Courts are using Intermediaries60 who can meet with child witnesses and ask them those pre-prepared questions away from the Court environment. Those occasions have been successfully audio or video recorded.

2. Speaking to the Judge as a version of Meaningful Participation

The data I collected from proceedings-experienced participants in this research highlighted the importance to their well-being of speaking directly to the Judge. This was the version of participation that reassured them they had been heard and seen and involved in decision-making. This does not seem a ‘lot to ask’ given the Guidance around Judges Meetings already expressly provides that the purpose of these meetings is to enable children to gain ‘some understanding of what is going on and to be reassured that the judge has understood him/her.’ Thus, it seems that the framework already exists to give children what they seek, given the Guidance already explicitly supports discussions between judges and children about children’s wishes and feelings. Placing emphasis on this aspect of Judges Meetings does very much place professionals in that ambiguous area where conflicting professional views might arise.

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60 People trained to support children and adults who might be at a learning disadvantage to give their best evidence
about whether children’s talk constitutes evidence, or not. There are ways to overcome this, however. One way might be for the Judge’s Meetings to be (audio or video) recorded. Another way might be for the Judge to be given a list of the questions children want to ask in advance, so that professionals can be confident that conversations do not trespass inadvertently into evidential territory.

3. Relating to children giving their ‘wishes and feelings’

Proceedings-experienced participants also highlighted how the lack of dialogical processes between themselves directly with the decision-maker negatively affected the well-being of those who did not speak to the Judge. Their lack of information and context about what was happening in Court left them with the perception that they were inconsequential to decision-making, and thus being deliberately ignored. Similar recording processes to those I propose in section 2 above might alleviate what I found to be a chronic and long-term negative response to existing practices and thus be helpful to meeting children’s wider welfare needs. Changing existing practices by, for instance, the Judge audio-recording/writing a short message to thank children for their letter would alleviate the perception of being deliberately ignored. Perhaps more importantly the Judge explaining in those messages their decision and in reaching that conclusion, referencing the weight the Judge placed on their ‘wishes and feelings,’ would provide children with the information and context they crave in order to make sense of their lives and experiences.

4. Adapting the Public Law Outline

What my research also illustrates is that currently, every professional decision that is made around children’s participation in public law proceedings is informed, shaped and affected by the dominant welfare-through-protection discourse. Without a framework in place to structure and timetable arrangements for children’s participation, it is very likely thinking about the support proceedings-experienced participants forcibly expressed they needed to participate meaningfully in their own proceedings will continue to be subsumed by processes, which under the PLO timetable (see figure 2) move swiftly, through structured stages replete with dates for adults to file evidence and assessments, prepare for and attend hearings about children’s
protection. Incorporating a structure into the existing PLO framework would not be overly difficult. Indeed, if key information about children’s participation needs (see proposed checklist above) were available at each of the 4 stages of proceedings, the Court might be more robust in determining issues around children’s wider participation needs much earlier.

Children who might be Gillick competent, for instance, might be represented at early Hearings where decisions are being made about removal from their families. Such a framework might also avoid the delay and costs involved of adjourning Hearings where these or similar issues arise. Wider benefits include professionals and children having a level of certainty around what versions of participation will take place and how they are to be supported or adapted.

5. Coping with Child Participation

Finally, I would recommend that all professionals involved with public law proceedings, from the Judiciary, the other Government institutions (notably Social work departments and Cafcass) as well as the legal profession take very seriously the very deep and lingering negative affect that I found all participants expressed in relation to existing practices of child participation. Glossing over these issues as incidental or serving little systemic purpose is underestimating the power of what I have identified using the concepts of liminal hotspots and homeless affect. Throughout my data this sense that participants ultimately blamed themselves for situations they felt ‘went wrong’ or ‘did not work’ was recurrent. As we have seen, homeless affect lingers over time. It undermines professional and personal confidence, but is at the same time, difficult to challenge or address as it is felt to be deeply personal and often embarrassing. Importantly then, my findings indicate that professionals and children can find it very difficult to move on from challenging incidents of child participation and when they try, it can be in order to insulate themselves from the distress and anxiety they feel, but cannot offload. For professionals, this meant re-calibrating their practices in ways that served to reinforce child participation as more illusory and paradoxical. These are exactly the practices that proceedings-experienced participants voiced as confusing and frustrating and that result in long-term harm. They cannot change the past but they cannot easily move on either.
The key therefore seems to be in working with professionals in small groups to explore their fears and anxieties around child participation in the context of their wider understanding of the practical application of child welfare policies. Groups could consist of people from the same profession, or from a mixture of the four professional backgrounds in this research. This work could be facilitated by a professional who has those intersecting legal/psychological skills required to support the group to reflect more critically on the practices and experiences that constrain how they think about and approach legitimate versions of child participation.

There might be the opportunity to involve proceedings-experienced participants in small group work. Certainly some of them were motivated to do so, during our interviews. That small group work could look more generally at children’s experiences of child participation to help professionals understand what expectations children have of the child/professional relationship in terms of their participation experiences and how that shapes their expectations of child participation.

8.3 Limitations and Opportunities for Future Research

My intention was to collect data from a diverse sample of professional cohort and proceedings-experienced participants. However, as outlined in chapter 4, I was constrained in my efforts by various challenges with uptake. This meant that whilst I sought to interview participants from across England, my participants were primarily based (even though some practiced in areas far beyond those parameters) in the South/South East (as far west as Berkshire and as far north as Norfolk). Additionally, my professional cohorts were all white British. Future research might explore whether my findings are more nationally and indeed culturally representative.

My research was also limited methodologically by the data I analysed emanating from the transcripts of one-on-one interviews I conducted with my participants. Future research might explore the paradoxes that came to be revealed across the data collected by convening small group work settings where professionals and proceedings-experienced participants might discuss the contradictory views, beliefs and expectations that these different groups of individuals hold. Bringing representatives from these populations into contact in a forum where
the pressure and urgency associated with ongoing proceedings is removed, might provide opportunities to expand on the reflections that for many, began during our one-to-one interview sessions and which begin to break down the discursive/affective, practical and political obstacles that currently dominate thinking about child participation in this arena.

Further, the focus of this research was around the dominant discourse and practice of professionals who come directly into contact with children as part of discharging their professional duties, including discussing children’s participation needs. Judges are not part of that process. Nevertheless, it is clear from my data that they are perceived to play an important and influential role in relation to what versions of participation children might access. Researching this cohort of professionals may shed light on how the views of the Judiciary shape child participation opportunities and in consequence, what professionals feel constrained/empowered to pursue with the Court on children’s behalf.

Also, by limiting the ambit of my research specifically to professional/child relations in public law proceedings, I have not considered the influence of the dominant discourses and perspectives of parents, who often express views about their child’s involvement in their proceedings. Indeed, Parkinson & Cashmore’s (2008) research explored exactly that issue but in relation to private law proceedings and divorce. Looking at that intersecting research area could offer insights into how the views of parents might frustrate or facilitate institutional thinking or practice of child participation.
REFERENCES


Hanson, K. (2016). *Children’s participation and agency when they don’t ‘do the right thing’*. Childhood, 23(4), 471-475.


### APPENDICES

**Appendix 1a): Interview Schedule for Proceedings-Experienced participants who were under the age of 18 at the time of interview**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Question</th>
</tr>
</thead>
</table>
| **Participation**            | What does taking part or participating mean for you?  
What did you think taking part would be like?  
Did the reality of being involved in your proceedings live up to the way you were thinking about it before it happened? |
| **Your case - going through the motions** | Before there was a Court case, what information had the Social Worker given you about what could happen?  
What involvement did you have in social work meetings (Case Conferences, CiN meetings, Family Group Conference)? How was your involvement worked out?  
How did you become aware of your case going to Court?  
How did you feel about news that a Judge was going to be making decisions about your future?  
What were you told happens in Court? For example, about how long it would take or about the professionals who were involved and you might meet?  
How did it make you feel to know these people were all trying to make the right decisions about your future?  
What was your understanding of the role of your Social Worker/Guardian/Solicitor?  
Can you describe the types of things you discussed with them?  
How many Court Hearings were you told about? Do you know what happened at those?  
Who told you about the Judge’s decision? What were your views about the outcome? |
| **Your unique experiences**  | Describe how you were involved in your proceedings.  
How did this come about?  
What support was there for you during your involvement in your case?  
What were the good/bad things about being involved?  
What decisions were you involved in about:  
- The Hearings  
- The evidence  
- The reports before the Court?  
- Your involvement in assessments  
What differences has your involvement in your own case made to your life? |
<table>
<thead>
<tr>
<th>Question</th>
</tr>
</thead>
<tbody>
<tr>
<td>What might you do differently if you could do it again?</td>
</tr>
<tr>
<td>What advice would you give professionals in situations where other children want to be more involved in their own case?</td>
</tr>
<tr>
<td>What did you understand to be the reasons given by the professionals to involve you in the way you were?</td>
</tr>
</tbody>
</table>
b) Interview Schedule for Proceedings-Experienced Participants who were over the age of 18 at the time of interview

<table>
<thead>
<tr>
<th>Themes</th>
<th>Primary Questions</th>
<th>Follow Up Questions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Participation</strong></td>
<td>What are your thoughts about children being involved in their own Court cases?</td>
<td></td>
</tr>
<tr>
<td><strong>Your Social Workers and their involvement with your family before your Court proceedings</strong></td>
<td>Why did Social Workers end up coming to see you?</td>
<td>What involvement did you have in Case Conferences or Child in Need meetings or Family Group Conferences?</td>
</tr>
<tr>
<td></td>
<td>How did it make you feel having to meet with Social Workers?</td>
<td>How were those decisions reached?</td>
</tr>
<tr>
<td></td>
<td>What information did the Social Worker give you about what could happen?</td>
<td></td>
</tr>
<tr>
<td>What did you understand the Social Worker’s role to be when they came to visit you at home?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Where did your understanding come from?</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Your Case</strong></td>
<td>How did you become aware of your case being in Court?</td>
<td></td>
</tr>
<tr>
<td></td>
<td>How did you feel about being told a Judge would be making decisions about your future?</td>
<td></td>
</tr>
<tr>
<td></td>
<td>What were you told about what happens in Court?</td>
<td></td>
</tr>
<tr>
<td></td>
<td>What did you understand to be the roles of the different professionals who would be at Court?</td>
<td></td>
</tr>
<tr>
<td><strong>Your unique experiences</strong></td>
<td>Describe how you were involved in your proceedings.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>How did this come about?</td>
<td></td>
</tr>
<tr>
<td></td>
<td>What support was there for you during your involvement in your case?</td>
<td></td>
</tr>
<tr>
<td></td>
<td>What were the good/bad things about being involved?</td>
<td></td>
</tr>
<tr>
<td>How much of what happened in Court was explained to you?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Who explained things to you?</td>
<td>Why was it important that things were explained to you?</td>
<td></td>
</tr>
<tr>
<td>What decisions were you involved in about:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
- The Hearings
- The evidence
- The reports before the Court?
- Your involvement in Court assessments

What differences has your involvement in your own case made to your life?

What might you do differently if you could do it again?

<table>
<thead>
<tr>
<th>The Meaning of your Participation for you</th>
<th>Describe why you wanted to be involved in your own case. What did this mean for you?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>In what ways did you want to be involved in decisions being made about your future?</td>
</tr>
<tr>
<td></td>
<td>What did the social worker or Guardian tell you it was possible for you to do to become more involved?</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>What you think ‘participation’ means for professionals</th>
<th>Some Court professionals take the view that the most important thing is to protect young people from what happens in Court. What do you say about that?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Some Court professionals believe that young people do not fully understand the impact of what is being decided in Court. What do you think about that?</td>
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<tr>
<td></td>
<td>Were there differences in the ways different professionals felt you should be involved?</td>
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<tr>
<td></td>
<td>What were these different views?</td>
</tr>
<tr>
<td></td>
<td>Do you know why they held different views?</td>
</tr>
<tr>
<td></td>
<td>What did you understand to be the reasons given by the professionals to involve you in the way you were?</td>
</tr>
<tr>
<td></td>
<td>What advice might you give to the professionals who supported your participation in your proceedings if you could speak to them now?</td>
</tr>
<tr>
<td>Themes</td>
<td>Primary Questions</td>
</tr>
<tr>
<td>----------------------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td><strong>Meaning of ‘participation’</strong></td>
<td>I want to discuss ideas around the involvement of children and young people in their own proceedings and understand what that means for them and for those working with them.</td>
</tr>
<tr>
<td></td>
<td>I thought we could start with you telling me about your professional experiences, where you or another professional have had to focus on involving a child more?</td>
</tr>
<tr>
<td></td>
<td>What would you say are your ‘notes to self’ about how far to involve EG an 8/14 year old in their own public law proceedings?</td>
</tr>
<tr>
<td></td>
<td>How do you go about assessing how a child or young person should participate in their own proceedings?</td>
</tr>
<tr>
<td></td>
<td>How comfortable would you be with a child of 5, 8, 14: • Instructing their own Solicitor? • Being a witness • Seeing the Judge • Seeing evidence</td>
</tr>
<tr>
<td></td>
<td>In what circumstances might you question the role a child/young person should or could play in their own proceedings?</td>
</tr>
<tr>
<td><strong>Concept of childhood</strong></td>
<td>What types of things do you think about when you are asked to describe the term ‘childhood’?</td>
</tr>
<tr>
<td></td>
<td>How might these things or influences affect your decisions about child participation?</td>
</tr>
<tr>
<td><strong>Experiences of supporting child participation</strong></td>
<td>Describe occasion(s) where you have been concerned that a child’s/young person’s voice has not been fully heard.</td>
</tr>
<tr>
<td>-------------------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Describe occasion(s) where you have been satisfied that a child’s/young person’s voice has been fully heard.</td>
<td>What impact did this have on the proceedings?</td>
</tr>
<tr>
<td>Describe experiences you have had where a child/young person has sought more involvement than the professionals have decided they should have?</td>
<td>How were the situations resolved?</td>
</tr>
<tr>
<td>Why do you think it is that children or young people do not have more of a presence in their own proceedings?</td>
<td></td>
</tr>
<tr>
<td>How might a child or young person be supported to become more involved in their own proceedings?</td>
<td>What advantages or disadvantages might there be to the way the outcomes for these children or young people?</td>
</tr>
</tbody>
</table>
Appendix 3: Information Sheet for Proceedings-Experienced Participants

Being involved in your own Court case.

INFORMATION SHEET
Thank you for your interest in becoming involved in my research.

Talking to you about being a Young Person who was involved in your own case

Throughout the country children and young people are having to cope with the involvement of Social Workers and other people from Court in their lives. Often children and young people wait for the adults to make decisions for them, whilst a few, like you, try to take things more into their own hands, to find out more and become involved in the decisions being made.

My name is Sara and I am a University Student. Before this I worked as a lawyer involved in cases like the one you were involved in. As a student, I now have teachers who help me learn. They are called Sarah and Jo. I will be talking to them about my research and that means that sometimes I will speak to them about you and our meetings.
This is what I look like

This is how you can contact me

You can call, text or what’s app me on

You can e mail me on

You can write to me at

I am hoping to meet with you on about 3 or 4 occasions, when you have the time. I am happy to meet with you at a place of your choice, so long as this is safe for both of us. These meetings will involve us talking about the professionals you met and how you became involved in your Court case. If I ask you something that you would rather not answer, then you do not have to. It is totally up to you as to what you want me to know, or not. I would also like to know something of your own personal situation now. Knowing more about you would help me to understand the full picture but if that might be difficult for you then that is OK, too. [I was thinking of bringing some drawing and writing materials with me and have some other ideas of things we could do to fill our time together, but if you just want to talk, that is OK. Whatever we do, ] we will record it so that we can be sure that we correctly remember everything that you tell me.
Your Rights in relation to this research

- **We ensure your safety:** I carry photographic identification and have undergone police checks. My University is aware that I am speaking to you and other young people and they have made sure this is safe for both you and me. If you are worried about meeting with me on your own to begin with, we can talk about you having an adult you trust with you when we meet. It is also fine for that trusted adult to not be there once you are feeling comfortable with me, too.

- **We guard your privacy:** your involvement will stay private and will be used only for my research. I will not tell anyone apart from my teachers about what you say. If I am worried about you and your safety I might need to tell another adult who can help you but that will not happen without me talking to you about this first. You will not be named in my research report and I will use a pretend name for you and anyone you might talk about instead. You can see what I write up from the recording of our meetings to feel sure yourself that you cannot be identified. You can also make changes to those write-ups by letting me know what you would rather it said instead. I can meet with you or speak on the telephone to do this.

- **We respect your wishes:** No-one is taking part who does not want to. Even if you say ‘yes’ to begin with, you are free to change your mind at any time up to the end of December 2019 without giving me any reason whatsoever.

- **We answer your questions:** My teachers and I will always be happy to answer any questions you may have about this research. It is important to us that you know what is happening.

- **We will keep your information safe:** we have procedures in place, which keep the recordings and transcripts of your interviews private and
confidential until they are destroyed, which will happen when my research is published.
Appendix 4(a): Consent Forms for Proceedings-Experienced Participants under 18

Consent of Young Person (11 years and over)

(Name) has agreed to participate in research titled

‘How do children and professionals negotiate child participation in public law proceedings?’

Name written by Young Person Date

Please tick the box if you agree with each point below:

I have read and understand the Project Information Sheet □

I am happy to take part in the meetings and spend time with you □

I am happy to speak to you about being involved in my own Court case □

I am happy for you to voice record our conversations □

I understand that I will be known by a pretend name so my life stays private □
Consent of Parent/Guardian

As a parent/guardian you are making a decision whether or not to permit [NAME] participating in this research. Your signature indicates that you have read (or been read) the information provided about this research and have decided to allow [NAME] to participate. You will receive a copy of this consent document.

Signature
Parent/Legally Authorized Representative Date

Please confirm by ticking the box that you understand that:

The interviews with [NAME] will be audio-taped □

You can withdraw [NAME] from the interview sessions at any time without giving any reason □

Unless you have withdrawn consent for the use of any or all of the data collected by 31 December 2019, it will be available for use in this research and that the transcript(s) (as revised or amended by your child) remain(s) the property of the researcher and/or the Open University until its/their destruction at the conclusion of the research project. □

You may contact Sara Hammond at any time with questions and/or concerns or alternatively contact her Supervisor (details below) if this is more appropriate. □

You may request a copy of the summary project report on research findings □
Contact details for the Principal Investigator and Research organisation and faculty:

HREC/3072/Hammond

Contact details for an alternative contact if you have any concerns about the way the research project is being conducted:

This research has been reviewed by, and received a favourable opinion, from the OU Human Research Ethics Committee - HREC reference number: 3072.
INFORMED CONSENT

I confirm that I have read and understood the information provided to me about this project and that I agree voluntarily to participate in it by taking part in audio-recorded interviews with the researcher, Sara Hammond. I am aware and understand that:

1. I can withdraw from any or all of the interview meetings at any time without giving reasons.
2. I can withdraw consent for the use of some or all of the data collected from me in relation to my participation in this project, up to 31 December 2019, without giving reasons.
3. Unless I withdraw in accordance with paragraphs 1 or 2 above, all data relating to my involvement in the research will be available for use in this research and that the recording(s) and transcript (as revised or amended by me) remain(s) the property of the researcher and/or the Open University until its/their destruction when Sara Hammond’s research project is published.
4. My identity and personal circumstances and that of those I may speak about will remain anonymous and confidential. I understand that I will be assigned a pseudonym for the purposes of the research project.
5. I may contact Sara Hammond at any time with questions and/or concerns, or alternatively, contact her Supervisor, [NAME] if this is more appropriate (see contact details below).
6. I may ask for a copy of the information that will appear in the research project in advance of publication.

Dated.................................................................

Signed.................................................................

Supervisor details:
Please note, my Supervisor will only know who you are as a result of your approach to her, given the need to keep your circumstances confidential, so please make contact with her by e-mail or post initially so that arrangements can be made for a discussion.
Appendix 5: Information Sheet and Consent Forms for Professional Participants

Information and Consent Form

Reasons for contacting you

I am inviting you to take part in my research, which is focusing on how children/young people who are involved in public Law Children Act proceedings experience that process. This study, which is being undertaken in fulfillment of my doctoral thesis requirements, aims to inform professionals working with children and young people in that environment, how to work with the children/young person to ensure that they are able to participate to the optimum level they wish to do so. It may be that this research also informs strategies being considered by the Vulnerable Witnesses and Children Working Group who are reviewing how children could or should become involved in their Court proceedings.

Who am I and what am I seeking to speak to you about?

Before commencing this research I was in practice myself as a Children Panel Solicitor and then as a Family Law Barrister. As a result I have some first-hand knowledge of working with young people and children who seek to involve themselves in their own Court proceedings.

I am seeking views, opinions and accounts of professional experiences from non-parent Court Users as to how children/young people have been (un)able to participate in their own public Law Children Act proceedings. I am interested in how you gauge competence in a child/young person, how you access their wishes and feelings and how this in turn impacts on the role the child plays within the Court process. In addition, I would like to understand what it is you feel works well and what does not work so well when supporting a young person to participate in such proceedings.

The process

This is an entirely voluntary process, which I appreciate will involve you giving up your time. I anticipate our meeting will take about 60 - 90 minutes. It can take place at a public or professional venue and time of your choosing. I propose to send you the interview schedule in advance of our meeting so that you can acquaint yourself with the themes and types of
questions I will be asking within my research. If you have any concerns about any of the questions, please do not hesitate to raise these with me in advance, or alternatively, you can simply refuse to respond to the question.

When I send you the Interview Schedule, I will also send to you a ‘Background Information’ sheet, which I hope you will be able to complete together with this Consent Form, at our meeting (I will bring paper copies so please don’t waste your time printing anything out).

I will audio record the interview, so please bear that in mind when considering a venue. I will also be transcribing the interview for the purpose of my analysis. You are very welcome to have a copy of your transcript, which you can amend or change as required. If you do wish to amend or change any part of the transcript, please let me know at your earliest opportunity.

As it is a voluntary process, you are of course entitled to withdraw without providing me any reasons at any time before, during or after our meeting and indeed up to any point before I begin to write up my thesis, namely by March 2020.

How your identity and our discussions will be kept confidential

All data collected from you will be stored on the Open University’s secure Hulse server and will be deposited in a secure area dedicated to this project. Automatic backups of this server are made every 24 hours. Data security will be maintained by ensuring that research material is accessible only to my supervisory team, those involved with Data Protection management at the Open University and me. Off campus access will be possible using a secure VPN connection. All desktop and laptop computers where research material will be accessed will be protected by passwords. If file transfers are required between research staff, either encrypted memory sticks or the secure online file transfer systems of WeTransfer or Zendto will be used.

If written extracts from the transcribed interview appear in my final thesis, these will be anonymised and a pseudonym will be used both for you and anyone else you may mention.

What will happen to your data

At the point of submission of my thesis, the audio recording of our interview and the Background Information sheet will be deleted/destroyed. Until then, all recorded data will remain strictly confidential and protected in accordance with Data Protection legislation, including the GDPR, Open University and the British Psychological Society ethical guidelines. I hope eventually you will want to have sight of the published thesis and if you do, please let me know and I can send you a copy.

Working together

I am very happy to keep you generally advised about the progress of this research and to offer you the opportunity to meet me or speak to me by telephone to discuss the outcome of your
involvement and the research more generally, should you so wish. In addition, and only if there is interest, I am considering organizing a workshop at some point for professionals to attend, to discuss the views being given by young people who have participated in public Law Children Act proceedings. That is also entirely voluntary and would be something you could consider, or not, if it ever becomes a reality.

Thank you for your time and I very much look forward to our discussions.
INFORMED CONSENT

I confirm that I have read and understood the information provided to me about this project (as set out above) and that I agree voluntarily to participate in it by taking part in an audio-recorded interview with the researcher, Sara Hammond. I agree to the use of my data as described above. I am aware and understand that:

7. I can withdraw from the interview at any time before it takes place without giving reasons.
8. I can withdraw consent for the use of some or all of the data collected from me in relation to my participation in this project, up to 31 March 2020, without giving reasons.
9. I am aware that unless I withdraw in accordance with paragraphs 1 or 2 above, all data relating to my involvement in the research will be available for use in this research and that the recording(s) and transcript (as revised or amended by me) remain(s) the property of the researcher and/or the Open University until its/their destruction at the conclusion of the research project.
10. I understand that Cafcass has refused formal support for this research and that my participation by way of this interview takes place on that basis.
11. I understand that both my identity and that of anyone I may mention will be and remain anonymised.
12. I may contact Sara Hammond at any time with questions and/or concerns, or alternatively, contact her Supervisor, [NAME] if this is more appropriate (see contact details below).

Dated………………………………………………………………………………………….

Signed……………………………………………………………………………………..
Supervisor details:

Please note, my Supervisor will only know who you are as a result of your approach to her, given the need to keep your circumstances confidential, so please make contact with her by e-mail or post initially so that arrangements can be made for a discussion once she is made aware of your concerns and your identity.