Whose Wishes and Feelings? Children’s Autonomy and Parental Influence in Family Court Enquiries

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Summary

The importance of the child’s right to be heard and for their wishes and feelings to be taken notice of is now accepted across a broad professional and research terrain. Increasingly, children are being treated as active participants in the processes and decisions that affect them. In cases of divorce and separation, especially where parental relationships are conflicted, the accepted wisdom in the UK for many years has been for children to be protected rather than empowered. More recently, practitioners, policy makers and researchers have looked for ways to involve children, although the ‘welfare’ of the child has remained paramount. In this context, the question of how to ensure that wishes and feelings expressed are those that authentically belong to the child, rather than to their parent, sibling or other, has achieved a new significance. This article presents findings from recent research to illustrate how the tension between protection and empowerment is being played out in this aspect of welfare report enquiries carried out by CAFCASS (Children and Family Court Advisory and Support Service) private law practitioners.

Keywords: family court, child’s wishes and feelings, parental influence
Introduction

When alternative methods of dispute resolution have been inappropriate or proved unsuccessful, a welfare report is usually deemed essential in cases of divorce or separation where the parties are contesting issues of contact, residence or parental responsibility, and where the court could make an order under section 8 of the 1989 Children Act. The report will normally be requested at the directions hearing and the judge will usually stipulate the issues to be addressed in the report—most frequently where the child should reside and how contact with the non-resident parent should be arranged. The report should be based on first-hand, comprehensive assessment and should appraise the quality of the relationships of the parties and their children (Burton, 2003, p. 405). The social worker responsible for preparing the welfare report has, since the arrival of CAFCASS, become the ‘children and family reporter’ who is neither an advocate for, nor a representative of, the child (available online at www.cafcass.gov.uk). Nevertheless, the reporter is required to represent the child in the sense of accurately assessing his/her wishes and feelings, within the confines of time and procedure. In the USA, a similar role is undertaken by ‘child custody evaluators’ who assist courts in making decisions about custody, visitation and child support (Ackerman, 2001).

Children whose parents are in dispute often feel ‘torn’, in the sense that their loyalties become divided, and this feeling is sometimes exacerbated by parental attempts to manipulate or promote a partial view. The child’s expressed opinion can be construed as a preference for one side or the other and, set in this context, gauging the child’s ‘real’ wishes readily shifts away from a straightforward ‘collecting of information’ towards a professional, highly charged, investigative and interpretative endeavour. Furthermore, the interpretation of the child’s wishes can be contested by one or both parents—something which is also a feature of child protection work (Lindley et al., 2001, p. 323). Practitioners face the further conundrum of establishing the genuine views of the child and conveying these to the court while, at the same time, promoting the child’s welfare in what is often a fraught net of family relationships. On the one hand is the drive to empower the child—so that she or he will feel able to say what they really want to—on the other is the duty to secure the child’s welfare. This everyday practice dilemma can be set in the context of an increasing interest in promoting the rights of the child and, more specifically, involving children as participants in the decision-making processes that concern them. The tension between protection and empowerment is present for all children but, for young children, the balance is readily tipped towards protection. But what is meant by ‘young’ and what assumptions may sensibly be made about the relationship between chronological age and competence? (Mantle et al. 2006). Similarly, are there children whose expressed wishes are less likely to be in their best interest? Schofield (1998), for example, argues that children who are ‘insecurely attached’ are, indeed, more in need of protection.
Literatures and key concepts

Divorce and separation

Within the extensive literature on divorce and separation, key themes directly related to children include: outcomes for children (Rodgers and Pryor, 1998; Ullmann and Hilweg, 1999; Wallerstein et al., 2002); children’s experience (Smart et al., 2001; Butler et al., 2003); and helping children cope with the process and effects of divorce (Dowling and Gorell Barnes, 2000; Wells, 2003). Against a background of increasing interest in the role of fathers (Lamb, 2004), the effects of divorce on the father–child relationship—and the role of stepfathers in this context—are also being researched and theorized (Amato and Sobolewski, 2004).

Two major propositions have achieved widespread acceptance and form a backcloth for welfare report enquiries: first, that children should retain ongoing relationships with both parents; and, second, that parental conflict may be just as significant as divorce or separation in causing children distress.

Parental influence

The continuing nature–nurture debate reminds us that the mechanisms and meanings of parental influence are both multifarious and contested. Kagan (1998), for example, in reviewing the three main ways that parents influence children—‘direct interaction, identification and transmission of family stories’—also emphasizes the part played by inheritance and by a set of wider factors such as the quality of schools attended, peer relationships and the historical era in which childhood is spent. For the purposes of this article, a wealth of child development literature concerned with how parents nurture and socialize children is relevant (Smith et al., 1998; Craig, 2000; Berns, 2001): perhaps more important, though, are resources that treat childhood as ‘constructed and contested’ (Wyness, 2000; Alanen and Mayall, 2001; James and James, 2004), inviting discourse about differences in power. In itself, the term ‘influence’ has neutral meaning but, re-set within a relationship characterized by an imbalance of power, the term can readily appear less acceptable, as ‘undue influence’. This article is concerned with the ways in which family court social workers respond to the undue influence by parents and carers. The picture, though, must be made more complex, given the involvement of two parents or carers in each case, and because these two sources of influence are conflicted. In such circumstances, an association between the strongest, or most secure, parent–child relationship and the greatest influence (and risk of undue influence) might reasonably be predicted. On the other hand, the child may, at crucial times, be more readily persuaded by a non-resident parent because of their wish to retain the (already estranged) relationship, especially when their parents are in conflict: in other words, an ‘insecure attachment’ (Howe, 1995; Simpson, 1998) may lead to a greater propensity to be influenced.
It is important to acknowledge the arrival of literatures devoted to the cultural aspects of child development (Rogoff, 2003) and parental influence in minority groups: black children and their parents (Hill, 1999; McAdoo, 2002); children of disabled parents (Newman, 2003); parenting in deprived environments (Ghate, 2002); and gay fathers (Patterson, 2004). Finally, works that consider the influence of the child on family dynamics (Crouter and Booth, 2003) usefully serve to: (i) highlight the part played by the child in the family, thereby reinforcing the notion of child-as-agent; and (ii) remind us that individual relationships are two-way and that they need to be located in their wider, familial context.

Family court practice

In reviewing literature that addresses the ways in which family court social workers and other professionals might work with children, a preliminary distinction can be drawn between: (i) knowledge and discourses about interviewing and observing children; and (ii) literatures addressing the broader field of children-as-participants in decisions and processes that affect them. It is possible to identify professional and academic disciplines that concern themselves with ‘reading’ children’s minds (Malle and Hodges, 2005)—including social work, clinical psychology, psychiatry, education, legal studies, health and research—and to draw from a body of theoretical and empirical resources about participation.

However, it is fair to say that very little is known about how welfare report writers find out what children’s wishes and feelings are in private law enquiries: the sole, previous empirical study in this area, reported by McNamee et al. (2003), included both private and public law practices.

Interviewing children

The effective interviewing of children, across a range of professional domains, is addressed by Rich (1968), Aldridge and Wood (1998), Bourg et al. (1999), Zwiers and Morrissette (1999) and Wilson and Powell (2001). In social work, there is a rich vein of expertise developed from, and sustaining, direct work with children and child protection practice (Sainsbury, 1994; Morgan, 1995; Prince, 1996; Kadushin and Kadushin, 1997; Kohli et al., 1997; Brandon et al., 1998; Stanley and Goddard, 2002; Waterhouse and McGhee, 2002). There is, however, a sparse literature specific to family court practice: Kearney (1997) examines the interviewing of children by judges; Dowling and Barnes (2000), drawing on their clinical experiences as psychologists and family therapists, suggest ways of enabling the child’s voice to be heard; while James et al. (2003) explore the models of childhood adopted by practitioners.

Scrutiny of this extensive and diverse literature suggests a set of common themes and issues: first, a concern with children’s competence and a related
range of interview and observation techniques; second, assumptions about the relationship between competence and the child’s age; third, the need to locate the interview within a wider sense of purpose and procedure—most often in terms of direct work/therapy or assessment; and, finally, assumptions about the relative power of interviewer and interviewee, and the effects of these assumptions, especially in regard to ethical considerations.

A series of questions can be used to identify the main phases in the interview and to highlight key issues that help in understanding the ways in which approaches to interviewing children can differ:

1. **Where should the interview take place and who should be present?** The practitioner’s office may offer a quiet space but also generate anxiety because of its formality. A home visit may tip the balance of power back towards the child but may also limit privacy. Young children may decide that they want a parent or sibling present during interview.

2. **How is confidentiality ensured, what limits are there to confidentiality, and how will these issues be explained to the child?** Children need to be reassured that what they say will be used in their best interests. By the same token, confidentiality will not cover any disclosures of harm.

3. **What purpose should play serve and how ‘free’ or guided should it be?** Play may be used to observe the child, on their own or with a parent or sibling, perhaps to assess attachment. It can serve as a way of allowing children to relax, in preparation for the interview, or to communicate non-verbally, often by drawing or using anatomical dolls. In therapeutic settings, play may be more open, while, in family court enquiries, play is usually more structured.

4. **What form should questions take and what information are they expected to produce?** Open-ended and indirect questions may allow the child to say what they want to without feeling pressured and to feel safe. In family court interviews, a general statement, such as ‘some people say that children should always live with their mother’ then asking the child to comment, can prevent any suggestion of having to choose between their parents.

5. **What techniques and aids are used for interviewing children of different ages and competences?** For example, there are ways of phrasing questions to younger children: Garbarino and Stott (1989) suggest that interviewers (i) use people’s names rather than pronouns—e.g. ‘aunty Mel’ rather than ‘she’; (ii) use the child’s terms, e.g. ‘gramma’ rather than ‘grandmother’; (iii) avoid giving the impression that the child has given the wrong answer. A comprehensive portfolio of games and their application in child custody practice in the USA are described by Vasquez (1995).

6. **How will the interview be concluded?** Sometimes the interview will be one in a series of contacts between interviewer and child, and sometimes a single meeting will be all that is possible. In family court (private law) practice, the expectation is that contact will cease after the final interview, although reporters occasionally refer children to other agencies.
How will information be recorded, analysed, evaluated and made use of?

Interviews might be audio- or video-taped, notes taken or a structured schedule completed. Analysis and evaluation can be guided through standard tools or left predominantly in the hands of the interviewer. McNamee et al. (2003) found that family court practitioners were more likely to interpret what a child had said than to include it verbatim in their written reports (p. 175).

Children’s participation

The UK government’s five-year plan for children’s services (available online at www.everychildmatters.gov.uk/strategy/childrenscommissioner) promotes children’s participation and there is recognition that involvement is not only a right for children but also a way of improving their safety, especially in regard to the care system (Willow, 2002). In the health field, research has shown that children who experience major surgery can develop a capacity for understanding and decision making that far exceeds commonly held perceptions about children’s competence (Alderson, 1993). This important insight suggests that children who experience the trauma of parental separation may, alongside the accumulation of vulnerability, develop a wisdom ‘beyond their years’ and provides a further manifestation of the empowerment–protection axis.

A key conceptual resource is James’s (1995) four ways of seeing children: the developing child (incomplete, lacking in status and competence: voice not to be taken (too) seriously); the tribal child (living in a conceptually different world from adults, separate from adults with their own rules and agendas—they are viewed as being part of an independent culture, worthy of study in its own right); the adult child (competent participants in a shared but adult-centred world—children are seen as socially competent in ways comparable to the adult); and the social child (sees children as having different though not necessarily inferior competences from adults but affords them the same status as adults—childhood is simply a stage in the life course, children are seen as unique). The first two constructions may be seen as reinforcing power differences between adults and children (Harden et al., 2000), while the second two provide understandings of ‘child’ that could promote participation and empowerment.

Most models of children’s participation present its development in a linear, step-by-step fashion; Shier (2001), for example, presents five different levels of participation:

Level 1 Children are listened to
Level 2 Children are supported in expressing their views
Level 3 Children’s views are taken into account
Level 4 Children are involved in decision-making processes
Level 5 Children share power and responsibility for decision making.
Others (see Treseder, 1997) have been critical of the linear approach and have argued that participation is both more complex and dependent on context. Where factors mitigate against high levels of participation and where individual rights are closely confined, any opportunity for children to be involved might represent a significant step forward. Linear approaches may, therefore, have some application in family court enquiries and, at least, offer a way for adults to review the arrangements made for children’s involvement.

Finally, there is a limited literature focused on the child’s participation in family court work. Robinson (1999) considers the involvement of children in family mediation, while Mantle (2001) examines their participation specifically in court-based schemes. Studies that include the child’s or young person’s perspective are rare, but include Neale’s (2002) and Seden et al.’s (2004) UK research, and Smith et al.’s (2003) study in New Zealand. In the specific context of private law family court practice, children’s participation is not expected: children are ‘interviewed’ so that their views may be established and relayed to the court but they do not directly take part in decision making. However, in terms of the first two and, arguably, the first three levels of Shier’s model, children can be understood as ‘participating’.

**Methods, validity and ethics**

Moules (2006) identifies a collection of approaches used in facilitating participation, including the use of drawing, dolls/models and ‘graffiti walls’. In some areas of interviewing practice—child protection especially—techniques have become highly sophisticated, particularly in terms of the degree of standardization in data collection and analysis tools, and related procedures. For example, developed in Germany to gauge the veracity of children’s testimony in sexual abuse trials, Statement Validity Assessment (SVA) is a highly standardized and tested method of assessing credibility. There are three main phases to SVA: first, a structured interview, usually audio-taped, sometimes video-taped; second, content analysis, based on nineteen criteria, that systematically assesses the contents and qualities of the interview transcript; and, finally, an evaluation of the content analysis outcome using a set of eleven standard questions—the ‘validity check-list’—addressing psychological characteristics (such as inappropriateness of language and affect), interview characteristics, motivation, and investigative questions concerning inconsistencies with other evidence (Vrij, 2000, pp. 113–56). A more limited standardization is also a feature of child custody evaluations in the USA: parents, for example, may be asked to self-administer the Ackerman-Schoendorf Scales of Parent Evaluation Custody Test (ASPECT), comprising sixty-eight questions, producing a rating of parental effectiveness—a ‘Parental Custody Score’—that can be used to guide court decisions (Ackerman, 2001).

There is a much deeper and taxing ‘validity’ question to be addressed here—one that urges caution regarding the standardization of practice. A naive
positivism underlies any assumption that a child’s wishes and feelings are simply ‘out there waiting to be collected’. Interpretation is unavoidable and meanings are likely to be contested. What goes into the welfare report is a representation, constructed by the author and reflecting a process that touches different stakeholders, purposes and interests. To use the parlance of power, how can we expect children to give their wishes and feelings to an adult, given the wider oppressions of adultism? (Harden et al., 2000; Thomas, 2000). In other words, if someone has no experience of giving their authentic wishes and feelings, or participating in decision making, is it sensible to expect them to be able to do so, in the absence of adequate preparation? The fact that a third of Britain’s children and young people live in poverty (House of Commons, Work and Pensions Committee, 2004) points to significant levels of disempowerment in a wider sense.

However, there are signals from research that most children’s competence may be greater than traditionally imagined (Neale, 2002; Smith et al., 2003). The strongest signal, perhaps, comes from recent projects involving children-as-researchers (Fielding and Bragg, 2003; Kellett et al., 2004; Moules, 2006), which suggest that even young children, from various backgrounds, can take part in the design, execution and evaluation of research. Of course, having established a preliminary case for feasibility, a raft of ethical concerns still remains and, indeed, debates about research involving children have mainly been about ethics (Lewis and Lindsay, 2000; Christensen and Prout, 2002). In family court work, a focal point of discussion has been confidentiality (Brayne and Carr, 2002) but, more generally, practitioners struggle with the need to protect the child and their familial relationships while, at the same time, taking steps to discover and publish the child’s wishes and feelings about residence and contact.

The research study

The aim of the study was to explore how the wishes and feelings of children are established for welfare report enquiries and the research involved in-depth interviews with twelve private law practitioners working in the East of England region of CAFCASS. All relevant policy and procedural documentation was scrutinized and aggregated background data for a total of 1,586 children—regarding the child’s age, sex and family size—relating to welfare report enquiries undertaken in 2002–03 were made available. Data related to the child’s race or ethnicity were not included; it is important to acknowledge that CAFCASS recording practices of race/ethnicity have since been systematized. Nevertheless, the lack of these data constitutes a significant weakness in the study: a recent survey reported that although the majority of clients interviewed were white British (86 per cent), with 14 per cent from other ethnic backgrounds, 7 per cent of clients said that they had specific cultural needs due to either their own or their child(ren)’s race or religion (British Market Research Bureau, 2004, p. 12).

The interview sample was drawn from four county areas in the East of England: Essex, Suffolk, Hertfordshire and Bedfordshire (combined), and Norfolk. The
aim was to include at least two practitioners from each area: this was achieved and the sample included male and female staff, with a representation from both the experienced and less experienced. Semi-structured interviews took place face to face on CAFCASS premises and began with an invitation to describe how welfare reports were prepared, with a sharpening focus on how the child’s wishes and feelings were established. The interviews were audio-taped and participants invited to add to or amend their transcript. Follow-up interviews were then used with each participant to clarify key issues raised in the first round and to confirm the significance of emergent major and minor themes; participants were also involved in the analysis phase of the research. Data were thematically analysed using the Nvivo qualitative data program and a full report of the study design, methods and findings is available (Mantle, 2006). Analysis of the data identified four major themes: (i) the age-relatedness of children’s competence (see Mantle et al., 2006); (ii) children’s autonomy and parental influence; (iii) the tension between the child’s agency and the need for protection; and (iv) opportunities for intervention, beyond assessment. This article addresses the second of these four themes.

Research findings

Four categories were used to organize data relating to the ‘child’s autonomy and parental influence’ theme: first, practitioner meanings of influence and ‘undue’ influence; second, steps taken to prevent undue influence; third, methods of detecting influence and checking out what the child says; and, finally, ways of responding to influence and its effects.

Meanings of influence

In making their decisions about whether or not influence had been acceptable or undue, interviewees described the following four key considerations.

Points of reference

Practitioners look for ways, including direct observation of the parent–child interaction, of finding out who is important to the child and the strength of the relationship:

. . . I’m always on the look out for attachments, or where a point of reference is, between the child and their care-givers. So, comments from the child like ‘me and mum think that’ or ‘me and granny always say that’ give you clues about where their point of reference is . . . that would also be an indication to start exploring what kind of influence that person is having, whether there’s some kind of alliance there that is going to affect the child’s
wishes and feelings. It’s such a fascinating topic because, dependent on the child’s age, what ability do they really have to form independent views?

This is a crucial point given that, in many cases, the child will have one key attachment; their wishes and feelings must, to some extent, be ‘influenced’.

**Coaching**

Practitioners made a distinction between the influence associated with a strong attachment and a parent simply ‘telling the child what to say’. The expectation was that the effects of ‘coaching’ would be very obvious—with the child ‘parroting’ what a parent, or older sibling, had said—and that the child, with minimal prompting, would volunteer, for example, that ‘Mummy told me to say’. On the other hand, there was sometimes a thin line between this form of ‘undue influence’ and the (neutral) information-giving preparation that a parent might provide.

**Brainwashing**

This went far beyond coaching and was seen as the result of systematic and persistent parental manipulation aimed at ‘turning the child against the other parent’. In such cases, practitioners felt that they would encourage the parent to acknowledge the long-term benefits to the child of retaining meaningful contact with the other parent. However, the effects of brainwashing, especially in the short period of time allowed for completion of the report (eight to ten weeks), were regarded as almost impossible to counteract.

**From both sides**

Children are sometimes subject to undue influence from both parents and, in such circumstances, can suffer a great deal of distress, feeling that whatever they say will upset one of their parents and, at times, having to lead ‘two different lives’. Enquiries are conducted within an adversarial context, in which parents disagree over important matters and where their respective legal representatives advise and act on their behalf. A disclosure by the practitioner of undue influence by one parent needs to be set within this contested arena.

**Siblings**

The issue of ‘influence’ was raised in the context of sibling relationships and, as can be seen from Table 1, about half of all enquiries involved more than one child, with one in seven involving three or more children.
Table 1 Number of children per case (figures are percentages)

<table>
<thead>
<tr>
<th>Area Cases with:</th>
<th>Essex</th>
<th>Suffolk</th>
<th>Herts and Beds</th>
<th>Norfolk</th>
<th>Totals</th>
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<tbody>
<tr>
<td>One child</td>
<td>52</td>
<td>49</td>
<td>55</td>
<td>48</td>
<td>51</td>
</tr>
<tr>
<td>Two children</td>
<td>35</td>
<td>41</td>
<td>28</td>
<td>34</td>
<td>34</td>
</tr>
<tr>
<td>Three or more children</td>
<td>13</td>
<td>10</td>
<td>17</td>
<td>18</td>
<td>15</td>
</tr>
<tr>
<td>Totals</td>
<td>100</td>
<td>100</td>
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The interview data capture two main possibilities: first, the child might be influenced by an older sibling; and, second, a ‘group’ perspective might develop from which it might be difficult to dissent. Practitioners took the ages of the children into account in decisions about how to interview but they were also mindful of the child’s wishes—for example, it was not unusual for a younger child to want to be interviewed with their elder brother or sister. Talking with each child separately was generally seen as important, if not essential, but there were opportunities too in meeting the children as a group:

I like to see them in all combinations if I can . . . the way they interact with their sibling is important but often it’s useful to see them separately too, so that you make sure the younger one isn’t just parroting what the older one says or, if they want to say something different one may be prevented from saying that, if the other one is going to tell mum or dad what they’ve said.

Preventing influence

All interviewees expressed an interest in reducing the occurrence of undue influence by the following methods.

Setting expectations

The initial meeting served to encourage parents not to ‘coach’ their child, reflecting the overriding concern of practitioners to avoid increasing the child’s distress:

It’s a very delicate area because I’m conscious throughout this process that the child could end up being further embroiled in the conflict because of the report and so we try, there’s a bit of an education role upfront as well with parents, to tell them about the negative emotional consequences for children where they are embroiling them, and where they are coaching them or telling them what to say to the officer.

In addition, practitioners took time to ensure that parents understood what the report was for and the importance of including the child’s real wishes and feelings within it. A leaflet for parent and child was available to clarify expectations.
Establishing trust and rapport

Gaining trust was seen as an essential basis for rapport with the child but limited time was available for this. Although the number of contacts with the child varied from case to case, it rarely exceeded three. Home visits were seen as essential to secure the child's trust and some practitioners also emphasized their primacy in terms of establishing the child's views:

I see children sometimes at their home, sometimes here at the office. The reason for being here is in terms of neutrality. I always find that children are much more open in their home than they are here. And though the other parent gets worried thinking 'oh well, they're going to say what the mother or father wants' I think it would be just as true at the office because the same parent would bring them here and take them away. . . . I've always found children more open in surroundings they're comfortable with.

Other reporters favoured CAFCASS premises, expressing reservations about the value of home visits, given that it was not always possible to ensure privacy:

If the home is open plan and I'm aware that the parent can actually hear the conversation then I would not have a detailed interview with the child, I may suggest that the child comes to the office at some stage. If a child is aware that their parent is listening that can skew the whole interview.

Detecting influence

Child as appendage?

All interviewees said that they met with parents first in order to appraise how much autonomy the child might be granted by their parents and thereby determine whether undue influence was likely:

A significant section of the first interview is to try and gauge what the parents believe the child's wishes and feelings are . . . and then how far is that parent giving an account more to do with their own views. You can gauge from their comments whether they're seeing the child as an individual or as an appendage to themselves. So, yes, you're trying to explore that from an early stage, to gain some independent view as to where the child is.

Rejecting the other parent

One common outcome of brainwashing was a wholesale rejection of one parent who, in effect, would be 'written out' of the child's life. In these situations, practitioners often encouraged the child to draw rather than talk—for example, 'a desert island, imagine being ship-wrecked upon it and then draw or write the names of the other people on the island'. The child's attention might then be brought to who was not included.
Shut down

Children who feel pressured and afraid of what their parents might think may refuse to participate:

... the child feels that they don’t want to talk to you at all, they’re anxious and worried that they’ve said the wrong thing and they’ve let one of their parents down... a little girl I’m working with uses every diversionary tactic to not talk, she wants to play, to show me this or show me that... I’ve acknowledged this with her, ‘You don’t want to talk about this, do you?’ and she’ll say, ‘no’, which is itself useful information. Each parent is wanting her to be on their side and she’s finding it impossible. There are lots of disputed allegations and they want to use her as a sort of, piece of evidence to say, well she’ll tell you this.

Checking out

Although interviews might occasionally be audio-taped, note-taking was the more usual form of recording. Over a series of contacts, practitioners made attempts to test out their understanding of the child’s views by referring back to what had previously been said and by looking for both supportive and for conflicting evidence. For example, a child’s story might be verified or brought into question through what their sibling had to say:

If younger children tell me something, I’ll check it out with the other child... older children will often give you a view... then, perhaps, the younger child will say something that makes you think ‘hang on, that older child’s been coached into saying this’.

Writing the court report was sometimes used as a final check:

... with older children, maybe eleven and above, I will show them the piece of the report that relates to them... I will make a further appointment to go back and check with them, that what I’ve written is an accurate reflection of what they intended, because I’m always conscious that I may have interpreted wrongly. Also, by the third visit I’ll have checked out—I think last time you told me this, is that right?—or—I understand that this is how you feel, tell me if I’m wrong—so, you’ve tried to confirm it along the way.

Responding to influence

Having established that parents or siblings had exerted undue influence, the practitioner was faced with deciding what action to take.

Challenging parents?

Practitioners indicated that they would challenge parents when coaching was obvious. However, for longer-term forms of influence, this would be less likely
during the (brief) course of the enquiry. Instead, a reference to the strength of the child’s attachment to one parent would be made in the report, with a suggestion, perhaps, that this might be making it difficult for the child to voice an interest in contact with the other parent.

**What to put in the report?**

A key theme is ensuring that the child knows how what they say will be represented in the report, especially given the repercussions there might be for the parent–child relationship:

At least a good proportion of the first session is ensuring they understand exactly who I am—at an age appropriate level, and they are comfortable with what my remit is, and they understand what they’re telling me isn’t confidential in the sense it will be included in the report which parents will see. But, also to convey to them that it is confidential in a wider sense and to help them understand that, although I’ll be talking to both parents, I can do that in a sensitive way as well as not necessarily tell everything verbatim that the child has said to me to the parent . . . you have to be sensitive, you’re in a kind of contract with the child about not making their situation worse, not making a parent angry with the child.

In cases in which protection was in the foreground:

I say to parents and children if there are safety issues I would have to disclose those. Yes, nothing is secret. I have to tell the children you can’t tell me anything secret. I can’t keep a secret.

Furthermore, practitioners employed a number of literary devices to protect the child:

What I find hardest interviewing children and then reporting to court is that most children are amazingly honest . . . they say things that you know if you put in the report might foul the relationship with the other parent . . . I avoid writing ‘Luke said this’ rather ‘in my opinion, he has been devastated by his father not turning up over the last three months’ . . . I try to put it that way round.

**Whether to intervene?**

Practitioners used play or specially designed toys as a means of allowing the child to express their concerns:

There’s another little boy I’m working with, it’s a domestic violence issue and he witnessed the latest incident . . . everything suggested that he was coping well, that he was incredibly resilient but when I played with him, he had two models representing his mum and dad and said ‘let the fight begin’ . . . I think it’s about encouraging children to tell their story and not avoid it, because on the face of it, this little boy wanted to see his dad but he was
trying to make sense of it and he later said, ‘you know, daddies shouldn’t hit mummies, should they?’ and there is a whole range of things that need to be done with him to help him through that.

Overall, practitioners rarely went beyond assessment, although some did take matters further, referring the child to another agency or intervening themselves through direct work with the family.

**Discussion and conclusions**

Practitioners described three purposes of their contact with the child: first, they wanted to build a trusting relationship; second, to make an appraisal of the child’s maturity; and, third, to gauge the child’s wishes and feelings. For older children, direct communication would be utilized; with younger children, ‘talk’ would be accompanied by play, using games or toys; while, for the very young, the child would be observed with their parents or carers. Different assumptions were expressed about the link between age and ability, although a flexible approach tended to be adopted; alongside their awareness of child development theory, practitioners made efforts to form their own view of the child’s level of competence, based on direct observation, play and communication.

Using the background data provided by CAFCASS for 2002–03, it is possible to compute an average of 8.1 and a modal age of eight years. However, as Table 2 demonstrates, the distribution of frequencies across the age categories from three to twelve years is fairly even, meaning that practitioners work with similar numbers of young and older children. Twenty-five per cent of children were aged four years or less; 42 per cent were aged five, six, seven, eight or nine; and 32 per cent were aged ten years or more (age divisions used by McNamee et al. (2003)). Detailed findings and discussion of the significance given to the child’s age and the implications for practice are presented in Mantle et al. (2006).

Unsurprisingly, efforts were made by all practitioners to validate their initial findings. In addition, one practitioner drew attention to an enhanced drive to validate children’s testimony. Testing out a child’s wishes and feelings was here

<table>
<thead>
<tr>
<th>Age Range (years)</th>
<th>Essex</th>
<th>Suffolk</th>
<th>Herts and Beds</th>
<th>Norfolk</th>
<th>Totals</th>
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<td>1</td>
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<td>7</td>
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<td>25</td>
<td>18</td>
<td>24</td>
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<tr>
<td>7, 8 or 9</td>
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</tr>
<tr>
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</tr>
</tbody>
</table>
given further importance because they were judged, as a group, to be more likely than adults to change their minds or to be temporarily swayed by events:

What they're going to tell me on a day when they've just had a row, might be completely different to what they're going to tell me another day.

There is a strong sense of James's (1995) ‘developing child’ here, although the extremity of the view was certainly not widely represented across the sample. Overall, the need to check out what the child says can more readily be linked with the practitioner’s awareness of the pressures facing the child, including the risk that undue influence might occur. Children were regarded as ‘truth-tellers’ with whom rapport could, in most cases, be readily established. However, the drive to protect the child from the effects of parental conflict was ever present: efforts were made to ensure that fraught situations were not exacerbated. This marks a central dilemma for reporters who, while seeking the child’s wishes and feelings, strive to avoid making the child feel torn between their parents.

In summary, practitioners were sensitive to ways in which a child’s views might be shaped extraneously. Although all would seek to test out whether or not this had taken place, there were differences in terms of what they subsequently chose to do with this information; again, this must be set in the context both of a limited timeframe and a procedure that produces a written report at its culmination, but it is still the case that some practitioners (simply) make reference to the matter within their report, while others see it as an opportunity to find out more or, indeed, to intervene—sometimes working directly with child and parents in order to prevent further occurrences and to facilitate an acceptance of the child’s viewpoint. In comparing our findings with those from previous research, it is possible to suggest a different emphasis in the understanding of why practitioners take such pains to check what children say, especially when this indicates a preference for one parent. McNamee et al. (2003) argue that this arises because practitioners almost always assume that ‘a child is loyal to both parents equally’ (McNamee et al., 2003, p. 173). An alternative sensitivity is that practitioners expect different loyalties and that the momentum to test out what children say stems more from the adversarial context within which enquiries take place—it is far from unusual, for example, for report-writers to be questioned in court about the contents of the report and about the steps taken to ensure veracity. Furthermore, our interviewees emphasized the risks involved in interpretation and the need to check out the information given. Finally, the use of verbatim material that contains an explicit declaration of preference for one parent was avoided, on the grounds that this might, understandably, have an unfortunate effect on the child’s relationship with the other parent.

Social workers in the family courts are asked to undertake enquiries that include interviews with children, so that they may establish and thus be able to represent the child’s authentic wishes and feelings to the court. The child’s ‘participation’ does not include any direct involvement in decision making
and is limited to having his or her views taken into account (level 3 of Shier’s 2001 model). Practitioners make efforts to prevent, detect and ameliorate the effects of undue influence by parents and siblings, all within a very limited time-span and with little guidance at their disposal. There is a growing acknowledgement that children whose parents are in conflict frequently ‘suffer in silence’ (Mantle and Critchley, 2004, pp. 1167–8) and, in this context, the calls for social workers to facilitate the child’s ‘voice’ and to work more closely with children are becoming louder. As alternative constructions of childhood, not based on notions of possession or protection, continue to gain ground, courts may want to consider ways of facilitating the participation of children and young people. Such involvement will, as Lewis and Lindsay (2000) argue, require a sharp shift in the adult–child power relationship and CAFCASS have an important part to play in this. The voices of children and young people involved in disputes caused by parental divorce or separation need to be heard and closely listened to. For this to happen, a new balance point is needed in the emphases given, respectively, to interviewing and observation skills, on the one hand, and facilitating participation, on the other. In the absence of a major shift in policy, the reliance on interviewing children could be supported and strengthened through the provision of ‘best practice’ guidance by CAFCASS.

In their efforts to discover and relay the authentic wishes and feelings of children, CAFCASS reporters are required both to employ a wide mix of skills and to shoulder a heavy responsibility. They interview young, older and teen-aged children who are often distressed, and parents/carers who are in dispute with each other. Their powers of interpretation are frequently put to the test and the difficulties they face in making sense of the information they receive, in a limited time, can readily be appreciated. To illustrate the point, consider some of the interpretations that could be made about a child’s expressed dislike for one of their parents or carers: (i) the dislike is authentic and justified; (ii) the child has been manipulated by the other adult or by a sibling; (iii) the child has an insecure attachment to the disliked parent; or (iv) the child feels rejected by the non-resident parent. Mindful of such demands, one way of developing social work practice in this area would be to ‘co-work’ (two practitioners nominated for the production of each report) all or most cases, thereby enhancing the expertise available per enquiry and providing practitioners with ready access to a second opinion. Although this is undoubtedly resource-hungry, the potential benefits for practice would be difficult to refute and the development would sit comfortably within government plans for the focus of CAFCASS’s work to shift from assessment towards intervention (Department for Constitutional Affairs et al., 2005). Within this wider policy change, it is predicted that the number of welfare report enquiries will fall, as more cases are dealt with informally. However, the cases that still require a report—including those that involve intimate partner abuse and those for whom mediation has not proved successful—are likely to be even more demanding.
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