

The relationship between compliance and compulsion, and dynamics of diversion, in child welfare decision-making

Michelle Donnelly  ^{1,*}

¹Law School, University of Strathclyde, Glasgow, Scotland

*Corresponding author: E-mail: m.donnelly@strath.ac.uk

ABSTRACT

This article explores the relationship between (parental) compliance and (child) compulsion, within the wider dynamics of diversion, in child welfare decision-making. It examines how notions of parental compliance can be used by decision-makers to distinguish between compulsory and voluntary forms of state intervention in children's and families' lives. The article focusses on Scotland as a case study by drawing on empirical findings from a qualitative investigation into gatekeeping decision-making in the children's hearings system, which found that notions of parental compliance are significant to decisions about whether to bring children within the statutory child protection system in practice. Key findings on parental cooperation, engagement, and acceptance are conceptualised as forms of 'compliance', linked to the existing international evidence base, and analysed in terms of state power and coercion, parental stigma and resistance in child protection processes. The relationship between parental compliance and child compulsion is scrutinised, in light of the procedural peculiarities of the Scottish system and wider proliferation of diversionary strategies aimed at reducing the numbers of children being drawn into formal child protection processes. The conclusion is that positive parental compliance may support diversion from involuntary child protection processes but there should be limits to reliance on negative conceptions of non-compliance to support direction into the statutory system.

KEYWORDS: child welfare, child protection, decision-making, state intervention, compliance, compulsion

I. INTRODUCTION

As the fundamental societal unit, the family is entitled to state protection and is free to lead its life without unjustified interference from the state. Although all major human rights instruments provide rights to respect for private and family life,¹ family autonomy is not

¹ See, for example, Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217A) article 12; International Covenant on Civil and Political Rights (adopted 16 December 1966 UNGA Res 2200A) article 17; United

absolute. There are circumstances in which the state is compelled to intervene to protect children who are at risk of suffering harm in the family environment.² State authorities are required to strike a delicate balance in child protection practice by safeguarding the child's absolute right to be protected, whilst also respecting (and not overstepping) private family life.

Decisions to bring children into the statutory child protection system constitute significant interferences with private family life. Child protection interventions – whether compulsory or voluntary in nature – disrupt family life, restrict family autonomy, challenge family integrity, and bring the rights of child and parent into sharp relief. When making decisions about entry into the child protection system, state agents are tasked with predicting potential future harm to the child: 'Child-protection workers are charged by the state, on behalf of the child, with investigating and preventing future dangers that, by their very nature, cannot be definitively known.'³ Very often that assessment will be based on past instances of harm to the child (or another in the family) and prior interactions between child welfare services and the family.⁴ This is especially true because child protection service involvement can be cyclical⁵ and intergenerational,⁶ where professionals find themselves working with the so-called 'usual suspects' and the door is open to potential bias, prejudice, and abuse of state power.

This article explores how decisions to pursue compulsory state intervention in family life are made and justified by state agents. It is based on empirical findings from a qualitative study on gatekeeping decision-making in the children's hearings system, which is the primary legal process for imposing compulsory measures of state intervention on children in Scotland. The study explored how decisions are made to bring children within the children's hearings system and found that notions of parental compliance (including things like parental cooperation, engagement, and acceptance of the problem to be addressed) can be influential to gatekeeping decisions in practice. In particular, notions of parental compliance were found to influence assessments about whether non-coercive, voluntary forms of intervention are sufficient or coercive forms of compulsory intervention are required.

A significant body of international research evidence, principally from the discipline of social work, similarly indicates that parental cooperation and engagement are influential factors in child welfare decision-making about state intervention in family life.⁷ Nevertheless,

Nations Convention on the Rights of the Child (adopted 20 November 1989 UNGA Res 44/25) article 16; Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) article 8; African Charter on Human and People's Rights (adopted 27 June 1981 21 ILM 58) article 18; American Convention on Human Rights (adopted 22 November 1969) article 11.

² For example, the state has a positive obligation under Article 3 of the European Convention on Human Rights, incorporated into domestic law by the Human Rights Act 1998, to take steps to protect children against known risks of abuse and maltreatment in the family environment: see, *Z and others v United Kingdom* [2001] ECHR 333; *E and Others v United Kingdom* [2002] ECHR 763.

³ D. Quick and A.L. Scott, 'Affect and Emotion in a Parent's Engagement with Statutory Child-Protection Services: Navigating Stigma and 'Identity Assault'' (2019) 49 *British Journal of Social Work* 485, 494.

⁴ See, B. Drake and M. Jonson-Reid, 'Substantiation and Early Decision Points in Public Child Welfare: A Conceptual Reconsideration' (2000) 5 *Child Maltreatment* 227.

⁵ J.D. Fluke, 'Child Protective Services Rereporting and Recurrence – Context and Considerations Regarding Research' (2008) 32 *Child Abuse & Neglect* 749; B.Q. Jenkins et al, 'The Complexity of Child Protection Recurrence: The Case for a Systems Approach' (2017) 63 *Child Abuse & Neglect* 162; K. Broadhurst et al, *Vulnerable Birth Mothers and Recurrent Care Proceedings: Final Main Report* (Nuffield Foundation, 2017); S. Bedston et al, 'Linked Lives: Gender, Family Relations and Recurrent Care Proceedings in England' (2019) 105 *Children and Youth Services Review* 104392; P. Cox et al, 'Reducing Recurrent Care Proceedings: Building a Local Evidence Base in England' (2020) 10 *Societies* 88; T. Esposito et al, 'Recurrent Involvement with the Quebec Child Protection System for Reasons of Neglect: A Longitudinal Clinical Population Study' (2021) 111 *Child Abuse & Neglect* 104823.

⁶ J.M. Marshall, H. Huang and J.P. Ryan, 'Intergenerational Families in Child Welfare: Assessing Needs and Estimating Permanency' (2011) 33 *Children and Youth Services Review* 1024; S. Font et al, 'Patterns of Intergenerational Child Protective Services Involvement' (2020) 99 *Child Abuse & Neglect* 104247; A. Proctor et al, 'Intergenerational Welfare and Contact with the Child Protection System' (2022) 7 *International Journal of Population Science Data* 85.

⁷ J.H. Littell, 'Client Participation and Outcomes of Intensive Family Preservation Services' (2001) 25 *Social Work Research* 103; D. Platt, 'Congruence and Co-Operation in Social Workers' Assessments of Children in Need' (2007) 12 *Child & Family Social Work* 326; K. Broadhurst, K. Holt and P. Doherty, 'Accomplishing Parental Engagement in Child Protection Practice? A Qualitative Analysis of Parent-Professional Interaction in Pre-Proceedings Work under the Public Law Outline' (2011) 121

parental engagement and parental cooperation are slippery, contested terms which are applied within highly discretionary areas of child protection assessment. As such, there is scope for abuse of state power and violation of children's and families' rights. Building on the existing evidence base, this article scrutinises the influence of notions of parental compliance on gatekeeping decisions about whether or not to bring children within the ambit of the compulsory child protection system.

Scotland is used as a case study, drawing on the qualitative study on gatekeeping in the children's hearings system. Key findings on parental cooperation, engagement and acceptance are presented, conceptualised as forms of 'compliance', linked to the existing social work evidence base, and analysed in terms of state coercion and power, parental resistance and stigma in child protection processes. The limits and legitimacy of parental compliance as a factor influencing gatekeeping assessments is then considered, in light of the procedural peculiarities of the Scottish system and the wider dynamics of diversion. The conclusion is that positive parental compliance can support diversion away from the compulsory child protection system but there should be limits to reliance on negative conceptions of compliance to justify direction into the statutory system. The article adds to the limited evidence base on decision-making in the Scottish children's hearings system and contributes to the growing international interest in parental engagement in child welfare assessment.

II. CONTEXTUALISING THE SCOTTISH CASE STUDY

This article is based on an empirical investigation into gatekeeping decision-making in the Scottish system of children's hearings. The children's hearings system, founded upon the influential Kilbrandon Report⁸ and operating throughout Scotland since 1971,⁹ is a welfarist and integrated child protection and justice system which responds largely in the same way to offence and non-offence cases.¹⁰ It is a quasi-judicial tribunal system, staffed by children's reporters, who make gatekeeping decisions about a child's entry into the system, and lay volunteer panel members, who make substantive decisions about disposal of the child's case. An important procedural feature of the system is the institutional separation¹¹ between the functions of proof and disposal: the former function of proof being determined by the sheriff court¹² in cases where the grounds of referral are disputed or not understood by the child and family¹³; the latter function of disposal being restricted to the authority of the children's hearing. It is the children's reporter who determines if a child should be referred to a children's hearing in the first place, based on the application of two statutory tests¹⁴ which are discussed below. It is then for the children's hearing, comprising three lay panel members, to decide if compulsory measures of state intervention should be imposed on the child and, if

Qualitative Social Work 517; J.C. Schreiber, T. Fuller and M.S. Pacey, 'Engagement in Child Protective Services: Parent Perceptions of Worker Skills' (2013) 35 *Children and Youth Services Review* 707; M. Evangelou et al, 'Seeking to Engage 'Hard-to-Reach' Families: Towards a Transferable Model of Intervention' (2013) 27 *Children & Society* 127; E. Arbeiter and K. Toros, 'Parental Engagement in Child Protection Assessment: A Qualitative Analysis of Worker and Parent Perspectives' (2017) 66 *International Social Work* 1469; R. Lehtme and K. Toros, 'Parental Engagement in Child Protection Assessment Practice: Voices from Parents' (2020) 113 *Children and Youth Services Review* 104968.

⁸ The Kilbrandon Report, *Report on Children and Young Persons (Scotland)* Cmnd. 2306 (HMSO, 1964).

⁹ The children's hearings system was introduced by Part III of the Social Work (Scotland) Act 1968, which was overtaken by Part II of the Children (Scotland) Act 1995 and later superseded by the Children's Hearings (Scotland) Act 2011.

¹⁰ For a recent discussion of the history and development of the children's hearings system, see, M. Donnelly, 'A Perspective on the Scottish Children's Hearings System: Prioritising Welfare, Enshrining Proportionality and Promoting Participation in Child Protection Interventions' in A. Wudarski (ed.), *The State's Powers to Intervene in Family Life* (Mohr Siebeck, in press).

¹¹ Described as the 'genius' of the Kilbrandon Reform in *Sloan v B* 1991 SLT 530, 548.

¹² Sheriff courts are local courts, sitting in six districts in Scotland, with jurisdiction for civil and criminal cases. Civil cases are heard by a legally qualified judge (a sheriff), whereas certain criminal cases are heard before a sheriff and a jury.

¹³ See, Children's Hearings (Scotland) Act 2011, ss. 93(1)-(2) and 94(1)-(2).

¹⁴ *Ibid.*, ss. 66(2)(a) & 66(2)(b).

so, to dictate what form those coercive measures will take. The welfare of the child is the paramount consideration across most stages of the legal process.¹⁵

1. The gatekeeping function

Children's reporters are the gatekeepers to the children's hearings system. They are professional decision-makers, typically with a background in law or social work,¹⁶ who perform a crucial evidence-gathering role to ensure there is a sound legal basis to justify the referral of children to hearings in practice. Children's reporters receive concerns about children in the local area, with referrals most commonly originating from the police, social work or education departments.¹⁷ The reporter investigates the referral and the child's wider circumstances, typically by requesting a social background report from the local authority.¹⁸ Indeed, a key feature of the reporter's investigation is that it is informed by multi-agency input from the major state agencies and is very often based on the assessments of other professionals, like social workers, teachers and health visitors, who have prior knowledge and direct experience of involvement with the child and family. Following these investigations, involving the layering of professional judgments about the potential need to intervene in the child's life, the reporter then decides if a children's hearing should be arranged for the child to consider whether compulsory measures of state intervention ought to be imposed.

Where a decision is made to arrange a hearing for the child, the reporter is obliged to draft a 'statement of grounds' which sets out the legal basis for compulsory state intervention, including the supporting facts which substantiate the grounds for referral.¹⁹ If the grounds are disputed or not understood, then the case is transferred to the sheriff court for a proof action in which the children's reporter leads evidence to try and formally establish the grounds in court.²⁰ Where the grounds of referral are so established, the case is transferred to a children's hearing for consideration and disposal.²¹ Otherwise, the referral must be dismissed.²² The role of the reporter diminishes at any subsequent children's hearing, in which the volunteer panel members are the ultimate decision-makers when it comes to disposal.²³

2. The statutory tests for referral

The primary role of the children's reporter is to decide which children should enter the children's hearings system and on what basis. The reporter makes these decisions based on two statutory tests found in section 66 of the Children's Hearings (Scotland) Act 2011. The reporter must determine: first, whether a section 67 ground applies in relation to the child²⁴; and, if so, second, whether it is necessary to make a compulsory supervision order in respect of the child.²⁵

The first test is about the application of at least one formal ground of referral. There are seventeen of these statutory reasons for intervening in the child's life, set out in ss. 67(2)(a)-(q) of the 2011 Act. The most common ones in practice tend to be that: the child is

¹⁵ *Ibid.*, s. 25.

¹⁶ S. Kuenssberg and A.D. Miller, 'Towards a National Reporter Service' in A. Lockyer and F. Stone (eds.), *Juvenile Justice in Scotland: 25 Years of the Welfare Approach* (T&T Clark, 1998) p. 174.

¹⁷ See, Scottish Children's Reporter Administration, *Statistical Analysis 2021/22* (SCRA, 2022) p. 14.

¹⁸ K.McK. Norrie, *Children's Hearings in Scotland* (4th edn, W. Green, 2022) para. 4.17. See also, Children's Hearings (Scotland) Act 2011, s. 66(4).

¹⁹ *Ibid.*, ss. 89(2)-(3).

²⁰ *Ibid.*, ss. 93(2) and 94(2). See also, *Ferguson v F* 1992 SCLR 866.

²¹ *Ibid.*, s. 108(2).

²² *Ibid.*, s. 108(3).

²³ Notwithstanding the reporter's role in appeal proceedings where the final decision on disposal made by the children's hearing is appealed by the child or parents.

²⁴ Children's Hearings (Scotland) Act 2011, s. 66(2)(a).

²⁵ *Ibid.*, s. 66(2)(b).

suffering from a lack of parental care²⁶; the child is exposed to domestic abuse²⁷; and, the child has committed a criminal offence.²⁸ It is open to the children's reporter to choose which ground or grounds are most appropriate on the facts, and reporters are directed to exercise their discretion by selecting the *single* ground which most appropriately reflects the concerns held about the child.²⁹ The grounds of referral are frequently classified as 'offence' and 'non-offence' grounds³⁰ and far more children are referred to the children's hearings system nowadays for non-offence (or care and protection) reasons. In 2021/22, 10,494 children in Scotland were referred to the children's reporter: 8,691 on non-offence grounds, and 2,398³¹ on offence grounds.³²

The second statutory test is about the necessity for a compulsory supervision order to be made in respect of the child. The making of a compulsory supervision order is the major disposal ultimately open to the children's hearing. It is an enforceable legal order that can have a range of coercive measures attached to it which regulate the child's life and upbringing.³³ The test of necessity refers to the perceived need for such measures to be imposed on a compulsory, rather than voluntary, basis.

The statutory tests for referral have been described as 'threshold conditions'.³⁴ Each test must be found to be met, and substantiated by sufficient evidence,³⁵ to ensure there is an adequate legal basis for intervening in family life. In the social work literature, the term 'threshold' is used to denote the level at which concerns about a child would be met with a service response in the UK.³⁶ More specifically, in the legal discipline, thresholds are statutory criteria³⁷ which must be satisfied before compulsory measures of intervention in family life can be lawfully imposed.³⁸ In other words, the legislation sets an initial threshold which must be crossed before a court or tribunal can consider what order, if any, should be made to protect the child. The UK Supreme Court has stressed the importance of this threshold approach in numerous appellate child protection decisions.³⁹ For example, *In Re J (Children) (Care Proceedings: Threshold Criteria)*⁴⁰ Lady Hale emphasised the way in which legal thresholds safeguard the right to respect for family life:

Time and time again the cases have stressed that the threshold conditions are there to protect both the child and his family from unwarranted interference by the state. There must

²⁶ Ibid, s. 67(2)(a).

²⁷ Ibid, s. 67(2)(f).

²⁸ Ibid, s. 67(2)(j).

²⁹ Scottish Children's Reporter Administration, *Practice Direction 7: Statement of Grounds – Decision Making and Drafting* (SCRA, 2013) p. 3.

³⁰ For discussion of the classification of the grounds of referral, see M. Donnelly, 'A Tripartite Analysis of the Grounds of Referral to Children's Hearings' (2019) 2 *Juridical Review* 117.

³¹ This figure includes 595 children who were referred both on offence and non-offence grounds.

³² Scottish Children's Reporter Administration, *Statistical Analysis 2021-22* (SCRA, 2022) p. 5.

³³ See, Children's Hearings (Scotland) Act 2011, s. 83(2)(a)–(i) for the measures that can be attached to compulsory supervision orders: e.g., a requirement that the child reside at a specified place.

³⁴ I. Kurlus, L. Hanson and G. Henderson, *SCRA Research Report: Children's Reporter Decision Making* (Scottish Children's Reporter Administration, 2014).

³⁵ Where the referral is based on non-offence grounds, the civil standard of evidence applies (the balance of probabilities); whereas proof of the offence ground is required on the criminal standard (beyond reasonable doubt): see, Children's Hearings (Scotland) Act 2011, s. 102.

³⁶ D. Platt and D. Turney, 'Making Threshold Decisions in Child Protection: A Conceptual Analysis' (2014) 44 *British Journal of Social Work* 1472.

³⁷ See, for example, the conditions for making a care or supervision order in England and Wales under s. 31(2) of the Children Act 1989.

³⁸ For discussion, see, K.McK. Norrie, 'Appellate Deference in Scottish Child Protection Cases' (2016) 20 *Edinburgh Law Review* 149, 150–151.

³⁹ See, for example, *Re S-B (Children) (Care Proceedings: Standard of Proof)* [2009] UKSC 17; *Re B (A Child) (Care Proceedings: Threshold Criteria)* [2013] UKSC 33; *Re J (Children) (Care Proceedings: Threshold Criteria)* [2013] UKSC 9; *Re EV (A Child) (Scotland)* [2017] UKSC 15.

⁴⁰ [2013] UKSC 9.

be a clearly established objective basis for such interference. Without it, there would be no “pressing social need” for the state to interfere in the family life enjoyed by the child and his parents which is protected by article 8 of the ECHR.⁴¹

The first statutory test for referral to a children’s hearing can be properly described as a threshold⁴²: at least one statutory ground must be found to apply before any hearing can be held to consider imposing compulsory measures of state intervention on the child. The grounds of referral are central to the practice of the children’s hearings system, whereby the acceptance or establishment of the grounds confirms the jurisdiction of the children’s hearing as a quasi-judicial tribunal.⁴³ The factual existence of at least one ground of referral indicates that the child might be in need of state protection and, so, the grounds provide justification for intervening in the child’s life on a compulsory basis. In this way, the grounds can be seen as establishing a form of public interest.

The second statutory test refers to the courses of action open to the children’s reporter, having determined that the threshold imposed by the grounds of referral has been crossed. The available courses of action at the gatekeeping stage are either: to arrange a hearing for the child,⁴⁴ where both referral tests are satisfied⁴⁵; to refer the child to the local authority for voluntary support,⁴⁶ where there might be concerns about the child but insufficient evidence of grounds or no clear basis for compulsory measures; or to take no further action,⁴⁷ and effectively dismiss the referral where the tests are not met.

It is the second statutory test for referral with which this article is primarily concerned. In particular, the following discussion examines how children’s reporters exercise their discretion as gatekeepers to determine whether a compulsory supervision order is necessary and, in so doing, distinguish between compulsory measures of state intervention and voluntary forms of support for children in practice. The test of necessity, which dictates this assessment, enshrines proportionality and minimum intervention principles in an effort to ensure that only those children who *require* compulsory intervention, in an imperative sense, are brought within the children’s hearings system. This imperative is supported by key policy initiatives, like the Whole System Approach and Early and Effective Intervention, which aim to divert children from the statutory system wherever possible.⁴⁸ Diversion is used in this way to mitigate against the known harm that can be caused by formal system contact.⁴⁹ The decision to refer the child to the local authority for voluntary support, as opposed to compulsory intervention, can be seen as a form of diversion – as can the decision to take no further action in response to the referral.⁵⁰ These lesser forms of state intervention in family life are relevant to the empirical findings discussed in the following sections.

⁴¹ Ibid, 44.

⁴² See, *AM & SO v Brechin* [2015] SCGLA 52, 9 where the grounds of referral were described as ‘threshold criteria’.

⁴³ Norrie (n 18) 3.02.

⁴⁴ Children’s Hearings (Scotland) Act 2011, s. 69(1)–(2).

⁴⁵ Indeed, the children’s reporter has a statutory obligation to arrange a children’s hearing for the child where he or she concludes that both tests are met.

⁴⁶ Children’s Hearings (Scotland) Act 2011, s. 68(5)(a).

⁴⁷ Ibid, s. 68(1)(a)–(b).

⁴⁸ K. Murray et al, *Evaluation of the Whole System Approach to Young People Who Offend in Scotland* (Scottish Government, 2015) p. 7.

⁴⁹ See, for example, L. McAra and S. McVie, ‘Youth Crime and Justice: Key Messages from the Edinburgh Study of Youth Transitions and Crime’ (2010) 10 *Criminology & Criminal Justice* 179; L. McAra and S. McVie, ‘Youth Justice? The Impact of System Contact on Patterns of Desistance from Offending’ (2007) 4 *European Journal of Criminology* 315; L. McAra and S. McVie, ‘Maximum Diversion: Minimum Intervention’ (2014) 2 *Scottish Justice Matters* 21.

⁵⁰ Although the decision to take no further action results in the referral being dismissed, the preceding investigation embarked upon by the reporter constitutes, in itself, an intervention and invasion into private family life.

3. The qualitative study on gatekeeping decision-making

The empirical findings upon which this article is based were obtained from a qualitative study conducted with children's reporters about their decision-making practices, which formed part of a wider investigation into the unitary nature of children's hearings as an integrated child protection and justice forum.⁵¹ There is a dearth of empirical research on the children's hearings system in general and on children's reporter decision-making in particular. All prior academic research on gatekeeping decision-making related to previous statutory regimes.⁵² The qualitative study was therefore carried out to better understand how reporters make gatekeeping decisions under the current legislative framework, namely the Children's Hearings (Scotland) Act 2011.

Ethical approval was obtained for the qualitative study in accordance with which informed consent was obtained from all participants, with their anonymity protected. Semi-structured interviews were conducted with 25 practising children's reporters working in different areas across Scotland, accounting for over 20 per cent of all reporters employed by the Scottish Children's Reporter Administration at the time.⁵³ Interviews were carried out either in person (21) or over the telephone (4), digitally recorded and transcribed. NVivo was used to manage interview data which were analysed thematically; such that common themes across the dataset were identified and comments from interviews categorised by reference to those themes. Elements of 'grounded theory' were applied, allowing for inductive interplay between data collection, analysis and theory development.⁵⁴ The interviews explored how children's reporters apply, and make decisions related to, the statutory tests for referral.

III. KEY FINDINGS FROM THE QUALITATIVE STUDY

The qualitative study solidified the characterisation of children's reporters as gatekeepers and guardians of evidence within the children's hearings process. Interview data suggested that reporters are firmly focussed on the statutory tests for referral when making gatekeeping decisions. Following the statutory tests, reporters make an evidential assessment about the application of grounds of referral in relation to the child. Having satisfied themselves that grounds of referral apply, children's reporters then make a professional judgment about the perceived necessity for a compulsory supervision order to be made in respect of the child. It is the making of that judgment that this article is primarily concerned with.

The qualitative study indicated that a range of factors are taken into account when reporters form their judgment about the perceived necessity for compulsory measures of state intervention to be imposed on the child. This included things like the potential provision of voluntary support as a lesser alternative to compulsory intervention; parental engagement and cooperation; acceptance of problem(s) to be addressed by the family; the nature and gravity of referral itself; any response to the referral incident; and the history and outcome of any previous referrals to the reporter.

The first three of these factors will be explored in the remainder of this article. The provision of voluntary support as an alternative to compulsory supervision, parental engagement

⁵¹ See, M. Donnelly, *The Kilbrandon ethos in practice: The antinomy of care and conduct in the Scottish children's hearings system. An investigation into the characteristically unitary nature of the Scottish system of children's hearings*, Ph.D. Thesis (University of Strathclyde, 2017).

⁵² See, F.M. Martin, S.J. Fox and K. Murray, *Children Out of Court* (Scottish Academic Press, 1981) Chapter 5: Reporters' Discretion, 64–92; C. Hallet et al, *The Evaluation of Children's Hearings in Scotland, Volume 1: Deciding in Children's Interests* (The Scottish Office Central Research Unit, 1998).

⁵³ Data collection and analysis was carried out between 2014 and 2016, after the Children's Hearings (Scotland) Act 2011 was brought into force on 24 June 2013.

⁵⁴ B.G. Glaser and A.L. Strauss, *The Discovery of Grounded Theory: Strategies for Qualitative Research* (Aldine, 1967); D. Walker and F. Myrick, 'Grounded Theory: An Exploration of Process and Procedures' (2006) 16 *Qualitative Health Research* 547.

and cooperation, and acceptance of the problem to be addressed, emerged as particularly dominant themes from the interview data and were discussed, in some form, by all participants in the sample. These themes or decision-making factors are directly relevant to the notions of compliance that are at the heart of this article.

1. Voluntary support as an alternative to compulsory intervention

The provision of voluntary support as a lesser alternative to compulsory intervention emerged as a clear theme from the interview data. This was discussed by all participants in the sample and can be thought of as the starting point or general schema in the formation of the children's reporter's judgment about the necessity for a compulsory supervision order. As one participant explained:

The primary consideration would be, you know, is there a need for compulsion or can any necessary supports be provided on a voluntary basis? (Reporter 12)

This sentiment was echoed by other participants, indicating that the reporter's gatekeeping assessment is primarily one about determining whether non-coercive measures of voluntary support are sufficient or coercive measures of compulsory supervision are required. Drawing on the statutory test of 'necessity,' one participant drew an explicit distinction between voluntary and compulsory forms of intervention:

Is there a need for a statutory order? There's quite significant focus . . . about drawing the distinction between the need for intervention and the need for compulsory measures. (Reporter 2)

Another participant aptly referred to voluntary support as the 'middle ground' of intervention for cases where ' . . . there's concern but the need for compulsion is absent because the family are willing to engage.' (Reporter 1)

The interview data indicated that the distinction between voluntary and compulsory measures lies in the perceived need to force or compel children and families to cooperate with state agencies and engage with any supportive measures put in place. As one participant said:

. . . if you have families and children working with services voluntarily . . . that means that they are seeking change and are engaged. Why then would you need compulsion? (Reporter 22)

Where families present as being engaged and cooperative, then reporters seem to interpret this as generally negating the necessity for compulsory forms of intervention and supporting the case for diversion; either by providing voluntary measures of support or taking no further action in response to the referral. Most participants expressed a preference to try voluntary measures first. Consistent with a minimal interventionist approach, compulsory measures of intervention were generally regarded as a last resort, where voluntary support was deemed to be insufficient or ineffective:

Well, if a family had been offered support on a voluntary basis but they weren't engaging or, they were engaging but voluntary support was proving insufficient or ineffective, only then would we look at compulsory measures. (Reporter 16)

There was consensus within the sample and participants generally agreed with this reporter's sentiment: that voluntary cooperation and engagement meant that the necessity for coercive measures is absent.

2. Cooperation and engagement

The qualitative study clearly suggested that the dividing line between compulsory and voluntary measures is cooperation and engagement, which emerged as a discrete and dominant theme in its own right. As one participant emphasised:

The main factor that would influence the final decision is whether or not a family are willing to cooperate on a voluntary basis with agencies because if they are willing to cooperate then, in terms of the minimum intervention principle, we ought not to be arranging a hearing unless we absolutely require it, unless a child absolutely needs compulsory measures of supervision. (Reporter 10)

The study indicated that forms of cooperation and engagement, discussed by all participants, can be influential to gatekeeping decisions. Even in cases of the most serious referrals, '... because of the way the parents have reacted and subsequently cooperated then no further action might be taken.' (Reporter 15)

Interestingly, as the above quote indicates, it was predominately cooperation and engagement from parents, rather than children, that mattered. Decision-making was therefore found to be parent-centric in nature. This may be attributed to the demographic of cases in the children's hearings system, where referrals are predominately, although not exclusively, made on care and protection grounds in relation to young children who are at risk.

Interview data did, however, indicate that there can be limits to the reporter's consideration of parental cooperation and engagement. Some participants discussed looking behind presentations of parental involvement to assess the wider impact on the child. For example, one participant stressed the need for meaningful engagement from parents:

... you have to be convinced that people aren't just toeing the line for the short interim. It has to be a meaningful engagement... [and if it was meaningful and not just tokenistic] there would be no need for me to bring them to a hearing. (Reporter 3)

Another participant challenged the value of parental cooperation, referring to significant case reviews (now termed learning reviews in Scotland) which take place when a child dies or is seriously harmed as a result of abuse or neglect:

Often in serious case reviews the focus is on people placing too much weight on parental cooperation and not really looking behind that. So, yeah, I think that we are quite careful about taking that kind of decision to refer to the local authority [for voluntary support]. (Reporter 14)

In the social work literature, these ideas are addressed by reference to the concept of 'disguised compliance' which is said to involve parents giving the impression of cooperating with professionals, in order to allay concerns and evade detection and intervention.⁵⁵ However, much like the concepts of parental cooperation and engagement, disguised compliance is another contested term.⁵⁶

Other participants linked their discussions directly to the experience of, and ultimate outcomes for, the child. For example, one participant commented:

⁵⁵ P. Reder, S. Duncan and M. Gray, *Beyond Blame: Child Abuse Tragedies Revisited* (Routledge, 1993).

⁵⁶ See, J. Leigh, L. Beddoe and E. Kendell, 'Disguised Compliance or Undisguised Nonsense? A Critical Discourse Analysis of Compliance and Resistance in Social Work Practice' (2020) 9 *Families, Relationships and Societies* 269.

... I suppose, the kind of key thing is the experience of the child in the midst of all of that because I think you have situations where people are cooperating as best they can but the situation doesn't change for the child and, in that case, I think compulsion is required. (Reporter 22)

Whilst some limits to the influence of parental cooperation and engagement were identified, the qualitative study nevertheless indicated that cooperation and engagement can be influential factors in the reporter's gatekeeping assessment about the perceived need for compulsory measures. Overall, it appears that where there is a willingness to cooperate, the potential for meaningful engagement, and a likelihood of impact in terms of achieving positive outcomes for the child, then the requirement of compulsion will be taken as absent, and reporters will likely pursue voluntary measures or even take no further action in response to referrals. By contrast, a lack of cooperation and engagement from parents may suggest that compulsory measures of intervention are necessary, resulting in the referral of children to hearings in practice.

3. Acceptance of the problem to be addressed

Another factor found to influence gatekeeping assessments, was acceptance of institutional concerns held about the child and family by professionals. Acceptance of the problem or problems to be addressed by state intervention in the child's life was raised by a majority of participants in the sample and generally linked to their discussions of cooperation and engagement. As one participant explained:

A massive part of my assessment will be whether or not the family are accepting of the concern, accepting of the need for support and engaging with any supports that are in place. (Reporter 2)

Acceptance of the concerns held about the child was described as a necessary starting point to, and prerequisite for, voluntary support. In fact, some participants thought it could make matters worse if families who were accepting and engaged were compelled to cooperate by being brought within the statutory system. As one participant commented:

... parents are absolutely going to be against the system if you're forcing them to be there and they just end up resenting the system as a whole. If they're accepting of the problem and working well on voluntary [support], then there's no need for [compulsory measures.] (Reporter 5)

Another participant stressed the importance of seeking acceptance and consensus about the nature of the child and family's problems, which was thought to have a positive impact on outcomes for the child. According to that participant:

In the sort of chronic, long-term lack of care type cases it's so much better if you can just get the family to agree what the issue is... Because so often you can build those relationships and then people come fully on board, and they don't see it as a threat, and then they work, and the outcomes are so much better. (Reporter 9)

The study thus suggested that acceptance of concerns about the child's welfare is a significant factor in the reporter's assessment. Where the starting point is one of acceptance, it appears that voluntary support might be more appropriate than compulsory intervention.

There was thought to be better prospects for meaningful engagement and cooperation where parents accepted the concerns that professionals held. Outcomes for the child were also thought to be better where intervention was based on acceptance and consensus about the particular issue(s) to be addressed.

IV. DISCUSSION OF KEY FINDINGS

Overall, the Scottish study indicated that parental cooperation, engagement, and acceptance can be crucial to gatekeeping decisions in practice. These are related and overlapping considerations which feed into the reporter's assessment of whether compulsory measures of intervention are required, or some lesser response might be sufficient. Having established the significance of parental cooperation, engagement and acceptance to gatekeeping assessments, this section conceptualises these decision-making determinants as forms of compliance and links them to the existing evidence base to scrutinise their significance to practice.

1. Conceptualising cooperation, engagement, and acceptance as compliance

The qualities of being perceived to be cooperative, engaged and accepting can be thought of as types of compliance, in light of the coercive powers of the state to interfere with private family life in the imposition of child welfare interventions. Drawing on the work of Pollack, MacKay and Shipp: 'Coercion implies that one person attempts to gain the compliance or cooperation of another. Failing to gain that compliance or cooperation results in a unilateral action by the coercer.'⁵⁷ Building on Donzelot's work about family policing and surveillance under the 'tutelary complex',⁵⁸ Dingwall, Eekelaar and Murray demonstrated the inevitability of coercive action in cases of non-compliance; stressing the complexity of the balance to be struck between child protection and adult freedom by agencies operating within a liberal 'guardian state'.⁵⁹ Given the dilemma presented by the dual role of the family as a 'bastion of liberty' and 'nurturant of future citizens',⁶⁰ liberal states are required to reconcile two conflicting objectives: respect for family autonomy on the one hand, and effective surveillance of child-rearing on the other.⁶¹ As such: 'The parent who repudiates the good faith and social necessity of regulation sets him or herself outside the liberal order as one who does not respect its basic principles. Coercion is, therefore, unavoidable.'⁶²

Through this lens, parental compliance (that is, positive cooperation, engagement, and acceptance) may be taken to suggest that compulsory intervention is unnecessary. In this way, positive compliance can be viewed as a mitigating, protective factor justifying diversion from the statutory child protection system. By contrast, non-compliance (that is, negative cooperation, engagement and acceptance) may suggest that compulsory intervention is necessary. As such, it may be seen as an escalating risk factor, justifying direction into the statutory system. The major rationale for this approach seems to be rooted in an assumption that parental compliance promotes positive outcomes for the child.

⁵⁷ D. Pollack, K. McKay and K. Shipp, 'The Use of Coercion in the Child Maltreatment Investigation Field: A Comparison of American and Scottish Perspectives' (2015) 22 *University of Miami International and Comparative Law Review* 129, 132.

⁵⁸ J. Donzelot, *The Policing of Families* (Hutchinson, 1980).

⁵⁹ R. Dingwall, J. Eekelaar and T. Murray, *The Protection of Children: State Intervention and Family Life* (2nd edn, Avebury, 1995) p. 211.

⁶⁰ *Ibid.*, 220

⁶¹ *Ibid.*, 231.

⁶² *Ibid.*, 204.

2. Locating the Scottish study within the existing evidence base

Dingwall et al's classic socio-legal study of child protection practice in England was among the first of its kind to make sense of child welfare decision-making.⁶³ It introduced the 'rule of optimism' as a theoretical construct to explain why child protection workers screen out so many of the cases they become involved with. Assessments are said to be conducted under a 'rule of optimism' whereby professionals are required, where possible, to think the best of parents.⁶⁴ Two institutionalised devices are identified – cultural relativism⁶⁵ and natural love⁶⁶ – which are used to rationalise optimistic interpretations of parental behaviour and explain tendencies towards non-intervention. This highlights the organisational basis of the theoretical construct, attending to the structural conditions which frame child welfare practice and may (informally) promote a culture of non-intervention in family life. Notions of parental compliance were found to be central to the operation of the rule of optimism, which may be breached by parental incorrigibility, opposition, and resistance. So long as parents 'maintained at least a surface cooperation they were less likely to be the object of compulsory action.'⁶⁷ By contrast, where parental cooperation was withdrawn, families were found to be more vulnerable to coercive state intervention.⁶⁸

The so-called rule of optimism is now regarded as a key feature of child protection discourse in the UK⁶⁹ as similar findings were echoed in subsequent studies.⁷⁰ For example, in the particular Scottish context, Hallet et al⁷¹ identified a preference for minimum intervention in their evaluation of the children's hearings system, which drew on decisions made by children's reporters in a sample of case referrals. Cooperation of the family was identified as a factor influencing gatekeeping decisions in 67 of 130 referrals sampled.⁷² The presence or absence of cooperation was most commonly identified as a reason for referring the family to the local authority for voluntary support, less frequently as a reason for referring the child to a hearing and least often for taking no further action in response to the referral.⁷³

Similar ideas and findings are found in the social work evidence base. Parental cooperation and engagement are central concerns for child welfare services, and the issue of parental engagement in the child protection context is said to be 'of significant international interest'.⁷⁴ A growing body of research suggests that notions of parental cooperation and engagement significantly contribute to social work assessments about child welfare interventions, particularly in policing the line between voluntary and involuntary forms of service involvement.⁷⁵

⁶³ R. Dingwall, J. Eekelaar and T. Murray, *The Protection of Children: State Intervention and Family Life* (1st edn, Basil Blackwell Publishing, 1983).

⁶⁴ Dingwall, Eekelaar and Murray (n 59) 79.

⁶⁵ The idea that one culture cannot criticise another by imposing their own standards of judgment; the task of social services is not to impose any particular value system on families.

⁶⁶ The general societal assumption that parents love their children; the excuse of natural love tends towards positive interpretations of parental conduct and makes intervention less likely.

⁶⁷ Dingwall, Eekelaar and Murray (n 59) 92.

⁶⁸ *Ibid*, 94.

⁶⁹ However, the rule is said to have become psychologised and (mis)applied as an explanatory device, primarily in serious/significant case reviews, to blame individual social workers for inaction. For discussion, see M. Kettle and S. Jackson, 'Revisiting the Rule of Optimism' (2017) 47 *British Journal of Social Work* 1624.

⁷⁰ See, for example, B. Corby, *Working With Child Abuse: Social Work Practice and the Child Abuse System* (Open University Press, 1987); D. Thorpe, *Evaluating Child Protection* (Open University Press, 1994).

⁷¹ Hallet et al (n 52).

⁷² *Ibid*, 15.

⁷³ *Ibid*, 16.

⁷⁴ Broadhurst, Holt and Doherty (n 7) 518. See also, T. Ney, J.-A. Stoltz and M. Maloney, 'Voice, Power and Discourse: Experiences of Participants in Family Group Conferences in the Context of Child Protection' (2011) 13 *Journal of Social Work* 184; Evangelou et al. (n 7); T. Slettebo, 'Partnership with Parents of Children in Care: A Study of Collective User Participation in Child Protection Services' (2013) 43 *British Journal of Social Work* 579.

⁷⁵ For example, see Littell (n 7); K. Dawson and M. Berry, 'Engaging Families in Child Welfare Services: An Evidence-Based Approach to Best Practice' (2002) 81 *Child Welfare* 293; Platt (n 7); J.C. Altman, 'A Study of Engagement in Neighbourhood-Based Child Welfare Services' (2008) 18 *Research on Social Work Practice* 555; J. Pennell et al, 'Taking Child and Family Rights Seriously: Family Engagement and Its Evidence in Child Welfare' (2011) 90 *Child Welfare* 9; S. Holland,

Scholars have attributed the interest in parental engagement and its influence on child welfare decision-making to contemporary policies focussed on diverting children and families from formal proceedings, where it is considered appropriate to do so.⁷⁶ Much of this practice is seemingly based on a theory that posits a link between parental engagement and positive child welfare intervention outcomes.⁷⁷ Studies have indicated that where parents engage with the child welfare decision-making process and cooperate with service plans for children, then this can have a positive impact on both service and child outcomes.⁷⁸ However, the link between engagement and outcomes is neither fully understood nor clearly substantiated.

3. Probing the link between engagement and outcomes

Although parental engagement is thought to promote positive child welfare outcomes, the empirical evidence to support any direct, causal link is unclear and contradictory. The precise nature of the relationship between engagement and outcomes is not well understood, and the evidence correlating parental engagement with improved outcomes for children is variable.⁷⁹ Existing research tends to capture perceptions and often relates to working relationships between parents and professionals, with little specific focus – and evidence – on child outcomes.⁸⁰

The strongest available empirical evidence arguably derives from Littell's study, which suggested a relationship between parental compliance and child welfare case outcomes where 'compliance' included keeping appointments, completing agreed tasks, and cooperating with service providers, and 'case outcomes' related to subsequent reports of child maltreatment and out-of-home placements.⁸¹ Similarly, Thoburn et al indicated better outcomes for children at risk of abuse where parents had been more involved with social work services.⁸² However, this connection was not present in the researchers' subsequent work.⁸³ Whilst Lee and Ayon claimed to show a correlation between good parent–social worker relationships and positive outcomes in child protection cases, the outcomes in question related to changes in parental behaviours; particularly in the interactions between parents and professionals, rather than specific improvements in children's outcomes.⁸⁴ This finding is echoed by Gladstone et al's work, which found a connection between perceptions of parental engagement, intervention satisfaction, and child safety by child protection workers and parents.⁸⁵ By contrast, Altman found no evidence of any actual relationship between parental

Child & Family Assessment in Social Work Practice (2nd edn, Sage, 2011); F. Mainstone, *Mastering Whole Family Assessment in Social Work: Balancing the Needs of Children, Adults and Their Families* (Jessica Kingsley Publishers, 2014); H. Ferguson, 'Patterns of Engagement and Non-Engagement of Young Fathers in Early Intervention and Safeguarding Work' (2016) 15 *Social Policy and Society* 99.

⁷⁶ Broadhurst, Holt and Doherty (n 7) 518.

⁷⁷ J.H. Littell, L.B. Alexander and W.W. Reynolds, 'Client Participation: Central and under Investigated Elements of Intervention' (2001) 75 *Social Services Review* 1; M. Staudt, 'Treatment Engagement with Caregivers of At-risk Children: Gaps in Research and Conceptualization' (2007) 16 *Journal of Child and Family Studies* 183; D. Platt, 'Understanding Parental Engagement with Child Welfare Services: An Integrated Model' (2012) 17 *Child and Family Social Work* 138; D. Charest-Belzile, S. Drapeau and H. Ivers, 'Parental Engagement in Child Protection Services: A Multidimensional, Longitudinal and Interactive Framework' (2020) 116 *Children and Youth Services Review* 105162.

⁷⁸ See, Dawson and Berry (n 75); Littell, Alexander and Reynolds (n 77); D. DePanfilis and S.J. Zuravin, 'The Effect of Services on the Recurrence of Child Maltreatment' (2002) 26 *Child Abuse & Neglect* 187.

⁷⁹ Schreiber, Fuller and Pacey (n 7) 708.

⁸⁰ R. Fauth, H. Jelcic and D. Hart, *Effective Practice to Protect Children Living in 'Highly Resistant' Families* (Centre for Excellence and Outcomes in Children and Young People's Services, C4E0, 2010).

⁸¹ Littell (n 7).

⁸² J. Thoburn, A. Lewis and D. Shemmings, *Paternalism or Partnership? Family Involvement in the Child Protection Process* (HMSO, 1995).

⁸³ M. Brandon et al, *Safeguarding Children with the Children Act 1989* (The Stationary Office, 1999).

⁸⁴ C.D. Lee and C. Ayon, 'Is the Client-Worker Relationship Associated with Better Outcomes in Mandated Child Abuse Cases?' (2004) 14 *Research on Social Work Practice* 352.

⁸⁵ J. Gladstone et al, 'Looking at Engagement and Outcome from the Perspectives of Child Protection Workers and Parents' (2012) 34 *Children and Youth Services Review* 112.

engagement and permanency outcomes in a mixed-methods study of community-based child welfare interventions.⁸⁶ Existing empirical evidence is therefore mixed and the assumption that parental compliance leads to better outcomes for children has not been substantiated. As Charest-Belzile et al recently observed: ‘this field of research is still emerging and study results are limited.’⁸⁷

The variability of evidence has been attributed to a lack of conceptual clarity about the nature of parental engagement itself.⁸⁸ This may have resulted in the adoption of unreliable empirical measures which has the potential to fuel illegitimacy in principle and practice: not least since much of the existing research measures parental engagement based on professionals’ perceptions of parental compliance with child welfare service plans.⁸⁹ A pressing matter for researchers and professionals alike is therefore the range of imprecise concepts that are used and applied in the field.

4. A lack of conceptual clarity

In the social work context, parental engagement is understood to be ‘a broad and complex term with multiple meanings, ranging from the extent to which parents participate in services offered to the effectiveness of the relationship between worker and parent.’⁹⁰ Parental engagement has been conceptualised as the degree to which parents are committed to collaborating with social workers to effect change, broadly construed.⁹¹ Pennell et al understand engagement as amounting to more than a helping relationship between child welfare workers and parents: one which enlists families in determining courses of action to improve the child’s situation.⁹² Although these conceptualisations speak to emerging collaborative approaches between parents and professionals in social work practice,⁹³ they are somewhat counterintuitive in that a perceived lack of engagement may be relied upon by professionals to support involuntary, coercive intervention as the appropriate course of action to be taken.

Platt helpfully offers an integrated, ecological model of parental engagement defined in the following terms: ‘the mutual, purposeful, behavioural and interactional participation of parent(s) and/or carers in services and interventions provided by social work and other relevant agencies with the aim of achieving positive outcomes.’⁹⁴ This definition draws attention to the behavioural, attitudinal, and interactional aspects of parental engagement which are linked to outcomes (changes in attitude, behaviour, health, and safety) in relation to child and parent. Beyond this, there is ambiguity in the ways in which parental engagement is conceptualised, applied, and quantified. Ultimately, the terms engagement and cooperation seem to be adopted interchangeably in the literature to indicate forms of compliance with child welfare agencies and interventions.

As Schreiber et al conclude: ‘Despite an increased emphasis on engaging families, there is a troubling lack of clarity about what engagement is, how to measure it, and how it is related to outcomes of child welfare interventions.’⁹⁵ Similarly, in summarising the existing field, Platt has observed: ‘This centrality of parental engagement to practice is not fully

⁸⁶ Altman (n 75) 555.

⁸⁷ Charest-Belzile, Drapeau and Ivers (n 77) 105162.

⁸⁸ See Schreiber, Fuller and Pacey (n 7) 708; Platt (n 77) 139.

⁸⁹ Schreiber, Fuller and Pacey (n 7) 708.

⁹⁰ Arbeiter and Toros (n 7); Lehtme and Toros (n 7) 104968, drawing on J.L. Damman, ‘Better Practices in Parent Engagement: Lessons from the USA and England’ (2014) 17 *European Journal of Social Work* 32.

⁹¹ Altman (n 75) 555–556.

⁹² Pennell, Burford, Connolly and Morris (n 75) 9.

⁹³ Trends towards relationship-based practice, involving the adoption of policies emphasising family engagement and participation in decision-making have been identified in the UK, USA, New Zealand, and Australia. See, Schreiber, Fuller and Pacey (n 7) 708.

⁹⁴ Platt (n 77) 142.

⁹⁵ Schreiber, Fuller and Pacey (n 7) 714.

understood, empirically. Research findings regarding the relationship between parental engagement and the outcomes of child welfare interventions are limited, variable and often contradictory.⁹⁶ It is clear that notions of parental compliance are significant to child welfare decisions and interventions in practice. However, there is a lack of conceptual clarity in the emerging field and any evidential link between parental compliance and positive outcomes for the child has not been robustly established. Overall, the existing field is contested and underdeveloped, conceptually, theoretically, and empirically. This calls into question the influence of parental engagement and cooperation in practice and highlights the limits of relying on notions of parental compliance in child welfare assessment and decision-making.

5. State power and coercion, family stigma and resistance

Themes that emerge from the foregoing discussion are the exercise of state power and force in pursuit of seemingly benign aims to protect the child. After all, as Pelton has noted: ‘the fundamental structure of the public child welfare system is that of a coercive apparatus wrapped in a helping orientation.’⁹⁷ From this perspective, the coercive authority of the child welfare system can be seen as a means of reinforcing parental behaviours that promote the welfare of the child and preventing parental behaviours that undermine the child’s welfare. However, there is room for abuse of state power within the highly discretionary child welfare framework. Furthermore, there are cogent reasons as to why families may be unwilling or unable to comply with the demands of the state, and align themselves with its perspective.

Possible reasons for non-compliance in the child protection context are not well documented but instructive research findings are beginning to emerge.⁹⁸ Family resistance might be rooted in parental experiences of trauma and adversity, the socio-economic conditions and personal characteristics of the particular individuals involved, and historic interactions with the child welfare system (as children themselves, or relating to proceedings about their own children). For example, it has been argued that high levels of maltreatment and adversity in mothers’ own childhoods can shape their adult relationships, particularly in entrenching a sense of mistrust towards professional help.⁹⁹ There is said to be an additional barrier to engagement for fathers who are more likely to be identified as ‘risky’ than vulnerable.¹⁰⁰ Parental anger, fear, and resistance have been attributed to the predominately involuntary nature of child protection service involvement¹⁰¹ where families have little power and agency within the process. Moreover, the psychological and economic conditions of families typically involved with the child protection system have been found to inhibit effective engagement with interventions.¹⁰²

Equally, research has indicated that families may be unwilling to engage with child protection services because they were ignored or undermined by professionals in the past.¹⁰³ It is well established that child protection processes can traumatise, shame, stigmatise, and

⁹⁶ Platt (n 77) 139.

⁹⁷ L.H. Pelton, ‘Four Commentaries: How We Can Better Protect Children from Abuse and Neglect’ (1998) *The Future of Children* 126, cited in Pollack, McKay and Shipp (n 57) 133.

⁹⁸ See, for example, N. Harris, ‘Assessment: When Does It Help and When Does It Hinder? Parents’ Experiences of the Assessment Process’ (2012) 17 *Child & Family Social Work* 180.

⁹⁹ C. Mason, D. Taggart and K. Broadhurst, ‘Parental Non-Engagement within Child Protection Services – How Can Understandings of Complex Trauma and Epistemic Trust Help?’ (2020) 10 *Societies* 93.

¹⁰⁰ M. Ryan, *Recurrent Care Proceedings: Five Key Areas for Reflection from the Research* (Nuffield Family Justice Observatory, 2021). Available from: <https://www.nuffieldjfo.org.uk/resource/recurrent-care-proceedings> (accessed on 13 October 2022).

¹⁰¹ S.M. Butler, N. Radia and M. Magnatta, ‘Maternal Compliance to Court-Ordered Assessment in Cases of Child Maltreatment’ (1994) 18 *Child Abuse & Neglect* 203; K. Healy and Y. Darlington, ‘Service User Participation in Diverse Child Protection Contexts: Principles for Practice’ (2009) 14 *Child & Family Social Work* 420; R.G. Mirick, ‘The Relationship Between Reactance and Engagement in a Child Welfare Sample’ (2014) 19 *Child & Family Social Work* 333.

¹⁰² W. Ghaffar, M. Manby and T. Race, ‘Exploring the Experiences of Parents and Carers whose Children Have Been Subject to Child Protection Plans’ (2012) 42 *The British Journal of Social Work* 887.

¹⁰³ Lehme and Toros (n 7) 104968.

undermine the rights of children and families.¹⁰⁴ This has been described as a paradox of child welfare practice,¹⁰⁵ where the very apparatus designed to protect and respect children and families can end up having the opposite effects. The child welfare system is set up in such a way that requires families to be passive and complicit – to ‘toe the line’, ‘get on board’, and ‘just comply’. And, if families do not do what they are told, then the state has the power to take their children away. This power dynamic has been described as amounting to ‘identity assault’¹⁰⁶ where any failure to comply is underpinned by a threat of coercive action. It is underscored by research findings which indicate that child protection workers can leverage parents’ fears of state power to coerce them into complying with service plans.¹⁰⁷ Such findings may help to explain the phenomenon of ‘disguised compliance’, alluded to above.

Within this coercive framework, can parental cooperation and engagement ever really be construed as voluntary? The constrained power and agency of children and families in child protection processes blurs the lines between voluntary and compulsory engagement. Through this lens, family resistance (or non-compliance) is understandable and may even be seen as justifiable. Indeed, there is growing acknowledgement in the emerging field that parental resistance and non-engagement should be seen primarily as an issue of professionals and services needing to do more to support families in trauma-informed and rights-respecting ways.¹⁰⁸ Nevertheless, this brief exploration of state coercion and family resistance underscores the pitfalls of using notions of parental compliance to dictate child welfare decision-making and assessment in practice.

V. CONCLUSIONS

Having located key findings from the Scottish case study within the existing social work evidence base, this article concludes by considering the legitimacy and limits of relying upon notions of parental compliance in gatekeeping decision-making in the children’s hearings system, and child welfare assessment more widely.

1. The legitimacy of parental compliance in the Scottish context

Although there are limits to the influence of parental compliance in child welfare decision-making, certain procedural features of the children’s hearings system arguably mitigate potential abuse of power in the Scottish context. Consideration of notions of parental compliance form only one part of the child welfare picture and overall gatekeeping assessment. As established above, children’s reporters apply a two-stage test in making gatekeeping decisions. The first test is about the formal application of grounds of referral. The second test is about the perceived necessity for a compulsory supervision order. Notions of parental compliance feed into the second test, and so comprise one part of a wider gatekeeping assessment. Only once the threshold imposed by the grounds of referral has been crossed will the reporter consider whether or not a compulsory order is required. This ensures that there is an evidential basis for imposing compulsory measures of intervention (because the child is suffering from

¹⁰⁴ Harris (n 98); A. Gupta, ‘Poverty and Shame – Messages for Social Work’ (2015) 3 *Critical and Radical Social Work* 131; L. Waterhouse and J. McGhee, ‘Practitioner–Mother Relationships and the Processes that Bind Them’ (2015) 20 *Child & Family Social Work* 244; R. Smithson and M. Gibson, ‘Less than Human: A Qualitative Study into the Experience of Parents Involved in the Child Protection System’ (2017) 22 *Child & Family Social Work* 565; M. Gibson, ‘The Shame and Shaming of Parents in the Child Protection Process: Findings from a Case Study of an English Child Protection Service’ (2020) 9 *Families, Relationships and Societies* 217.

¹⁰⁵ Gibson (n 104) 217.

¹⁰⁶ Quick and Scott (n 3).

¹⁰⁷ K. Kriz et al, ‘Fear Management: How Child Protection Workers Engage with Non-Citizen Immigrant Families’ (2012) 34 *Child and Youth Services Review* 316.

¹⁰⁸ See, Mason, Taggart and Broadhurst (n 99); D. Taggart, C. Mason and S. Webb, *Reconceptualising Parental Non-Engagement in Child Protection* (Frontline Briefing, 2020).

a lack of parental care, for instance) before the reporter determines what course of action is most appropriate. It is at this point that the reporter might be influenced by notions of parental compliance, particularly in distinguishing between the suitability of compulsory or voluntary forms of intervention.

The child and parents also have a statutory right to dispute the grounds and formally challenge the legal basis of the referral in the sheriff court. This procedural safeguard can be seen as an important check and balance on the exercise of the reporter's discretion to bring cases before a children's hearing. In addition, the separation between the stages of proof and disposal means that any children's hearing will independently (re-)assess the necessity for compulsory measures of intervention at the disposal stage. Although it must be acknowledged that hearings are likely to be influenced by the underlying assessments of professionals, like children's reporters and social workers, in making that final decision.¹⁰⁹ This, again, draws attention to the layering of (professional and lay) judgments in determining the best course of action for the child when it comes to the final disposal of the case.

The so-called beauty of the children's hearings system is that it aspires to look holistically at the whole child in the context of wider family circumstances and dynamics. Children's hearings were designed to be participative fora which aimed to enlist the cooperation of parents¹¹⁰ in order to improve the situation of the child. It is perhaps unsurprising, then, that notions of parental cooperation, engagement, and acceptance (in other words, compliance) are taken into account by decision-makers.

2. The limits of parental compliance and dynamics of diversion

This article has, nevertheless, explored limits to notions of parental compliance being relied upon in child welfare decision-making and assessment, drawing on original empirical findings from a qualitative study on children's reporter decision-making and wider international research evidence from the social work discipline. A lack of conceptual clarity about the very concepts of parental cooperation and engagement was highlighted, as well as unsubstantiated assumptions about the causal relationship between parental compliance and positive outcomes for the child. The dynamics of state coercion and parental resistance in child protection processes further underlined the pitfalls of relying too heavily on notions of parental compliance in child welfare assessment, particularly where these normative values are being used to satisfy a statutory gatekeeping test for compulsory state intervention in private family life. As such, parental compliance should be viewed as an *object* of state intervention, not the justification for imposing compulsory measures on children. Wider welfare concerns must be in play to safeguard against arbitrary decision-making and potential abuse of state power.

The influence of parental compliance on child welfare decision-making has been found to be linked closely to the dynamics of diversion. This has been driven by the proliferation of policy initiatives and statutory constructions (in Scotland and other jurisdictions) which encourage professionals to divert children from formal child protection processes, wherever appropriate. Although not without ideological limitations¹¹¹ or unintended practical consequences,¹¹² such initiatives have admirable, evidence-based aims to minimise the harm that tends to come with formal system contact. Nevertheless, professionals and researchers alike ought to be mindful of the underlying assumptions and overall limitations of using slippery notions of parental compliance to expose children and families to coercive forms of

¹⁰⁹ Scottish Children's Reporter Administration, *Decision Making in Children's Hearings* (SCRA, 2019) pp. 6–8.

¹¹⁰ The Kilbrandon Report (n 8) para. 36.

¹¹¹ R. Smith, 'Diversion, Rights and Social Justice' (2021) 21 *Youth Justice* 18.

¹¹² F. Gillon, *Early and effective intervention in Scottish youth justice: Benevolent principles and unintended consequences*, Ph.D. Thesis (University of Strathclyde, 2018).

state intervention. The overall conclusions are therefore that parental compliance should be seen primarily as an object of state intervention in children and families' lives, rather than a justification for imposing coercive measures on children. Consideration of positive parental compliance may support diversion from involuntary child protection processes. However, caution should be exercised where negative notions of non-compliance are used to justify direction of children into the statutory child protection system: wider welfare considerations must be established and substantiated by evidence to safeguard against potential abuse of state power and ensure adequate respect for private family life.

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