AN ENGLISH FAMILY COURT THROUGH THE LENS OF COMPLEXITY: AN ETHNOGRAPHIC STUDY OF MODERNISATION IN PRACTICE

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Abstract

Title: An English family court through the lens of Complexity: an ethnographic study of modernisation in practice.

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The thesis is formed of an ethnographic study of public law practice in a family court in England, with reference to reforms of family justice (commonly referred to as 'modernisation'). It draws on Complexity Theory to analyse policy and practice. Direct observation of public law work, supplemented by professional interviews, facilitates close engagement with practice and thereby adds to the meagre ethnographic literature on family justice. The thesis examines the influence of rational thinking upon modernisation (characterised by a statutory timeframe for care proceedings and curbs on the court's power to appoint expert witnesses), the short-term benefits and longer-term problems that have flowed from rational policymaking, and the ways professionals in the family court try to deliver fair justice and support children's welfare despite modernisation, which many now consider problematic. The relationship between policymaking and practice is explored, including the ways that professionals interpret the law and thus make policy upstream. The complexities of public law work are uncovered: the commonly intractable social and health problems of families subject to care applications; a family justice system that is formally adversarial in nature but also incorporates elements of consensual justice; challenges to managing cases that do not neatly fit into the prescriptions of modernisation; and, finally, the impact of Covid-19. The thesis advocates a more responsive and pragmatic policymaking to acknowledge the role played by professionals in making policy and to enable family justice to recover from the pandemic. It also argues that expectations that the family court can resolve many families' complex problems are unrealistic and makes the case for more concerted efforts to support families before and after proceedings.

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Diagrams and Tables

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I wish to acknowledge the immense support provided by my supervisors, Professor Karen Broadhurst and Professor Robert Geyer. I also owe a huge debt to the families that graciously allowed me to watch ‘their’ hearings, and to the professionals who contributed to this study: the Designated Family Judge without whose backing this study would not have been possible, judges, lawyers, social workers and children’s guardians. A special thanks goes to my professional interviewees.

Author’s Declaration

This thesis is my own work.

It has not been submitted for the award of a degree elsewhere.

As set out in Chapter 1, an article has been published (Green, 2021) that makes use of material presented principally in Chapters 2 and 3.

Chapter 1: Introduction

Subject of the thesis

The subject of the thesis is the family justice system, examined through the lens of Complexity Theory. Specifically, my interest is in the 'modernisation' of the Family Court in England, how this plays out, or otherwise, in the actions of key actors on the ground who are tasked with making best interest decisions for children in public law proceedings. The study engages closely with practice, and adds to the scant ethnographic literature on family justice, by interrogating the detail of reforms which have followed the Family Justice Review (2011b). The modernisation of family justice, resulting from wholesale review, has been the subject of heated debate within policy and practice arenas, but there has been little analysis of how changes brought forth by modernisation shape practice and family experience. This project takes up this challenge, providing rare insights into the everyday actions of family justice practitioners, in the context of the Covid-19 pandemic, as they navigate a system over-burdened with tricky family cases and find themselves constrained (at least superficially) by regulation.

This introductory chapter starts with the research questions, an explanation of how they were formed and how they cohere. Thereafter, it provides the reader with the necessary information to make sense of subsequent chapters. I first describe family justice and public law proceedings: what these are; the legal basis; the tests that the court must apply; and the orders available to the court. That is followed by brief explanations of modernisation and Complexity Theory (both matters being addressed in detail in the next two chapters) and a setting out of the context in which the family court operates, specifically the work of the local authority that precedes and follows proceedings. I then share reflections on the impact of a lengthy social work career on my undertaking this thesis. Finally, I provide a brief description of the thesis structure and the contents of each chapter.

Research questions

These are the research questions:

1 What form has the modernisation of family justice taken, and why?

2 How can Complexity Theory help us to understand family justice policymaking and practice in the context of modernisation?
3 What is the work and function of the family court in respect of public law matters?
4 What is the character of the family court; how do the categories of 'adversarial/inquisitorial justice' fit with the everyday practice of the court?
5 How do judges relate to families and how do they manage cases?
6 What were the impacts of Covid-19 on family justice; and what can we learn from family justice's response to the pandemic through the lens of Complexity Theory?

The thesis starts with a critique of modernisation. I draw on Complexity Theory ('Complexity'[1]) to demonstrate the influence on modernisation of the rational paradigm that has long dominated UK policymaking, together with the short-term benefits and subsequent unintended consequences derived from a rational approach. That critique is reflected in questions 1 and 2. As I show in Chapter 3, modernisation has been addressed in the public law research and literature (for example Kaganas, 2014; Masson, 2015) but not with reference to Complexity prior to my article (Green, 2021).

Analysing modernisation provoked my curiosity to understand the challenges faced by the family court, including those derived from policy, and how it sought to resolve them. I was familiar with public law work being described as 'complex' but wanted to investigate whether that adjective stood up to scrutiny and, if so, how. There were numerous reasons for my undertaking an ethnographic study (see Chapter 4), including the fact that there were no post-modernisation ethnographies of the 'standard' family court[2]. The principal draw of ethnography was, however, its promise to immerse the researcher in practice enabling him/her to 'see, hear, feel and come to understand the kinds of responses others display (and withhold) in particular social situations' (Van Maanen, 2011a: p. 219). Observing hearings in a family court ('MetroCourt'), together with professional

[1] Upper case throughout to distinguish the theory from the complex (lower case) properties of social systems – see Chapter 2.
[2] 'Standard' denotes the way most care proceedings are conducted as described in the next section. Some cases are heard by the 'problem-solving' Family Drug and Alcohol Court which is described in Chapter 3.

interviews, promised to supply optimal access ‘in real time’ to the interactions of those present in court, and to shed light on the work of the closed family court (see below).

Thus, by undertaking the MetroCourt study I revisited question 2, this time from an empirical perspective, and answered questions 3 to 6. Question 3 is concerned with the work of the family court in the public law arena – the families that appear before the court and their commonly obdurate problems – together with expectations of the family court. Echoing contributions made by others such as Trowell (2018) and MacAlister (2022) I question whether so many families need to appear before the family court, what the court’s current function is and whether that requires a rethink (see Chapter 5).

Question 4 relates to family justice’s evolution from an adversarial system into a hybrid one as it incorporates elements of inquisitorial justice and consent[3] (Munby, 2014; Brophy, 2006): in Chapter 6 I show how a hybrid system operates in practice.

Question 5 is concerned with aspects of the work of judges, specifically the way they make (or do not make) connections to families and manage cases. In Chapter 7 I argue that public law case management is more complex than modernisation would have us believe, and show how professionals have implemented the law to deliver fair justice, thereby creating policy upstream as postulated by Complexity (McBride, 2017; Murray et al, 2018).

The decision to observe a court in practice was made in principle before the pandemic struck but the study took place during it, between February 2021 and March 2022. Covid-19 caused great disruption to social work activity (see Sen et al, 2020, for international accounts of experiences provided by ‘grassroots voices’ - people with lived experience, practitioners and students - as well as academics during the first few months of the pandemic) and to family justice. MetroCourt operated remotely (primarily making use of video conference facilities) throughout that period. This presented me with an opportunity to consider public

[3] Consent is a term used colloquially in family justice to denote an agreement between the parties. This includes references to ‘a consent order’ though no such order exists in the legislation.

law work during a period of unprecedented and sudden turbulence when existing challenges to the work of the family court were amplified by enforced remote working, to reflect on what we can learn from that experience and how Complexity might be used to boost system recovery. That aspiration is captured by question 6 and forms the subject of Chapter 8.

Family justice and public law proceedings

Family justice in England and Wales is headed by the President of the Family Division (President). It is closed to the public and, though it is theoretically open to journalists, there are significant barriers to their accessing and reporting on hearings (Bellamy, 2020) with the consequence that the court's work is poorly understood, and its legitimacy questioned (Tickle, 2020). There are four tiers of judiciary in the family court - in ascending order magistrate, district, circuit and high court. Magistrates generally sit as a panel of three together with a legal adviser; otherwise, judges sit alone. There is no jury in the family court. Thus, if there is a dispute as to the facts of the case and whether the significant harm threshold is met (see below) it is for the judge to determine those matters, as well as the order to be made by the court.

There are two types of proceedings relating to children – private law and public law[4]. The former entails disputes within families, commonly separated parents, as to whom the child should live with or spend time with. Private law does not form part of this thesis. Public law concerns disputes between families and local authorities, the latter making applications to the courts for orders if they believe that these are required to protect the child from significant harm sustained, or likely to be sustained, within the family. A good 70% of all public law applications are made under s31 of the Children Act (1989)[5] to place the child in the care, or under the supervision of, the local authority[6]. Public law is the focus of the thesis, particularly s31 care applications.

[4] See Appendix A for a summary of Family Court structures and actors in public law cases. See, for example, Davis (2015) for a fuller account.
[5] Subsequent sections of legislation cited in this chapter refer to the Children Act (1989).
[6] Annual summaries - Cafcass - Children and Family Court Advisory and Support Service (Accessed 16 May 2022).

Care proceedings are one of the most intrusive interventions of the state in family life, potentially leading to the permanent separation of the child from its parents, an outcome described as draconian (Masson et al, 2020b). The process that the court should follow in such proceedings is set out in the Public Law Outline (PLO) (Ministry of Justice, 2021), the purpose of which is to standardise the conduct of proceedings, and expedite their timely conclusion, thus making efficient use of the court's resources. It identifies four key stages, the first of which is concerned with administrative matters such as the filing of documentation, allocation of the case to a judge, appointment of a children's guardian who in turn appoints a solicitor[7], and the setting of a date for the first hearing. The second stage entails one or more Case Management Hearings which issue detailed directions regarding, inter alia: whether anyone should be made a party to proceedings above and beyond the child, parents and local authority; drawing up a timetable for the proceedings; making an adjudication on any disputed matter of litigation capacity; and identifying the evidence to be placed before the court. Stages three and four are respectively the Issues Resolution Hearing which serves principally to narrow down the issues in preparation for the Final Hearing (or act as a Final Hearing) and then, unless the case has concluded, a Final Hearing. Each hearing is preceded by an advocates' meeting where the parties' legal representatives are expected to: identify expert witnesses, establish which matters are agreed by the parties and which require judicial adjudication, advise the court as to whether there is a need for a contested hearing or oral evidence to be given, and draft orders for the court's approval.

Courts conduct a two-stage test in care cases, threshold and welfare. The former requires the court under s31 to be satisfied that (a) the child is suffering, or likely to suffer, significant harm and (b) that the harm is attributable to the care given to the child, or the child is beyond parental control before making a care order or supervision order. Likewise, it cannot make an interim care or supervision order under s38 unless it has reasonable grounds for believing that the criteria (of significant harm and attribution) are met – a lower threshold than that which applies to a 'full' care or supervision order. These tests applied by the family court are referred to respectively as threshold and interim threshold. If the threshold is

[7] The child's views are represented by a 'tandem system' of children's guardian and solicitor.

deemed met then the court must, before making an order, consider the welfare checklist set out in s1 which includes the child's ascertainable wishes and feelings, his/her needs, harm suffered and the capacity of parents or others to care for the child.

There are six orders available to the court - see Department for Education (2014) for a fuller account. The most common legal outcome is a Care Order (Harwin et al, 2019) which gives parental responsibility to the local authority and the power to decide where the child will live. A supervision order places a duty on the local authority to advise, assist and befriend the child. A placement order authorises the local authority to place the child with prospective adopters. A special guardianship order (SGO) gives parental responsibility to the special guardian (generally a member of the extended family or a friend) to the exclusion of others, allowing him/her to make day-to-day decisions (Department for Education, 2017). The court may also make a child arrangements order regarding who the child is to live and/or spend time with. Finally, the court may make no order - indeed, it must not make an order unless it considers that doing so would be better for the child than making no order - though Harwin et al's (2019) study shows that such outcomes are rare.

The modernisation of family justice

Modernisation is a common shorthand (for example Ryder, 2012) to describe significant reforms to family justice, initiated by the Family Justice Review (FJR) (2011b) and enforced by the Children and Families Act (2014). It led to the creation of the single family court to replace the three different tiers previously in place (Magistrates, County and High Court). It also addressed the use of judicial resources, judicial case management, administration of the courts, court culture and practice. It exerted a substantial influence upon care proceedings by stipulating a statutory 26-weeks timeframe (with the court able to extend proceedings but only if that is necessary to enable the court to resolve the proceedings justly), raising the threshold for the appointment of experts to necessary and by restricting the scrutiny by the court of the local authority care plan. A full description and analysis of modernisation is provided in Chapter 3.

Complexity Theory

Complexity is a meta-theory whose central proposition is that linear and mechanistic explanations and prescriptions are of limited value when applied to complex social phenomena that are characterised by uncertainty and unpredictability (Regine & Lewin, 2000; Marion & Uhl-Bien, 2001). It challenges the rational paradigm (or 'rationalism') that heavily influenced modernisation. Rationalism is predicated on assumptions that the policymaker can indefinitely predict and control the impact of his/her stipulations. It tends to favour large-scale reviews (followed by policy inertia) and make use of performance indicators, audits and inspections to retain control. I argue, with reference to Complexity, that modernisation brought some short-term benefits to family justice but in time became unproductive, giving rise to worries that it undermined some children's welfare, as articulated by the Public Law Working Group (PLWG) (2019). My position then is not that rationalism is wrong but of limited merit, particularly so when tackling the considerable complexities of public law work. The following chapter is given over to Complexity and its critique of rationalism. The question to be addressed here is why I make use of it in this study.

Complexity was initially proposed to me by supervisors as I had previous knowledge of working systemically, having qualified as a family therapist in the mid-1980s. Reading some of the Complexity literature, I encountered concepts such as the complex adaptive system (CAS) (Bovaird, 2008) and emergence (Cairney & Geyer, 2015a). In the literature these ideas were applied to policymaking but they felt familiar to me from working with families: a system (whether a public service or a family) must adapt if it is to deal with foreseen and unforeseen difficulties; the way it adapts is determined by the communications and interactions of its members as well as by command (whether that emanates from policymakers or parents); a law of diminishing returns applies to direct instruction; too much disorder threatens a system's stability but too much order risks draining all the energy and vitality. Using a theory with which I felt instinctively in tune was not a compelling reason for using Complexity, but it was a helpful foundation.

More important was Complexity's track record of critiquing social policy - health (Cooper & Geyer, 2009), education (Szekely & Mason, 2019), local government (Bovaird & Kenny, 2015), asylum (Webb, 2018) to name a few examples. Complexity had been applied extensively to child protection, not just analytically (for example Stevens & Hassett, 2007) but also in the devising of local authority children's services (Goodman & Trowler, 2012) and in the Munro Review (Munro, 2011), a government-commissioned independent review of child protection in England. That it had not hitherto been used to analyse family justice was an added incentive to see what insights it could generate.

The work of the local authority in protecting children

Local authorities employ social workers to undertake direct work with families. Social workers receive (or should receive) regular supervision from a first-line manager that is designed to provide support, reflection and appraisal of performance. As will become apparent in Chapter 3, local authority social work is managerially 'top heavy' with various tiers between the social worker and Director of Children's Services (or similar). Auditing of written records is also commonly undertaken and the work of the local authority to support families and protect children is inspected by the Office for Standards in Education, Children's Services and Skills (Ofsted).

Local Authorities have a general duty under s17 to provide services to safeguard and promote the welfare of children in their area. They also have a duty under s47 to investigate if they have reasonable cause to suspect that a child is suffering, or likely to suffer, significant harm. The investigation has various possible outcomes: no further action, the provision of family support services, a child protection conference at which it will decided whether the child should be made subject of a child protection plan. If the child needs immediate protection the local authority may apply for an emergency protection order under s44 giving them authority to remove the child from parental care. (The police also have powers of protection under s46 allowing them to remove a child without a court order.) Statutory guidance regarding steps that should be taken once the child is subject to a multi-agency child protection plan (led by the local authority) is provided by Working Together to Safeguard Children (HM Government, 2018).

Key elements are assessments, support services, regular monitoring and review conferences. Child protection plans can also act as ‘gateways’ to applications to the family court if the assessments are unfavourable or further incidents occur. Before that happens, however, the local authority is required, other than when the level of risk dictates otherwise, to instigate a formal pre-proceedings process (Department for Education, 2014). This entails the local authority writing to the parents setting out their concerns and inviting them to a meeting. The parents are entitled to legal aid to gain legal advice and representation at the meeting. There are two purposes to pre-proceedings: one is diversion from the family court where safe to do so, the other is enabling the local authority to prepare its case. However, there are concerns that the process has a low diversion rate (Masson et al, 2013, 2020a) and is treated in some authorities as a procedural necessity rather than a concerted attempt to avoid care proceedings (PLWG, 2019).

Family justice and child protection activity can be construed as two discrete but inter-connected systems or as one. Welbourne (2016) favours the latter on the grounds that theirs is a symbiotic relationship: child protection requires independent arbitration regarding its most coercive intervention in family life, and family justice would not be required if there were no child protection activity. However, the systems are overseen by different government departments, child protection falling under the aegis of the Department for Education, whereas family justice is overseen by the Ministry of Justice. Moreover, the only professionals whom one would expect to encounter in both systems as a matter of course are local authority social workers. Lawyers do not feature prominently in child protection, exceptions being the local authority seeking advice as to the strength of their case before taking a matter to court and the parents being able to access free legal advice when the family is formally in pre-proceedings. Conversely, lawyers are ubiquitous in public law as the child, applicant local authority, respondent parents and anyone else made a party is highly likely to be represented by one. Likewise, the children’s guardian input is, with very few exceptions, limited to proceedings.

Notwithstanding the distinguishing features, the reciprocal influence of child protection and family justice is evident. Masson et al (2008) found that in a good

90% of care cases the family was previously known to children's social care[8], and that in 85% of such cases it was actively involved just before the application was made. Children's social care was hit hard by austerity, total spending falling by about 11% between 2009-10 and 2017-18 (Kelly et al, 2018), leading to a reduction in family support provision in favour of children at high risk and contributing to the rise in care applications made to the family courts. Bywaters et al, 2017 (see also Bywaters & the Child Welfare Inequalities Project Team, 2020; Webb et al, 2022) argue that: austerity politics has diminished the capacity of parents and local authorities to provide for children's well-being: local authority expenditure per child has substantially diminished; the fall in expenditure is more marked in the most deprived local authorities; family support is less available; children in the most deprived neighbourhoods are ten times more likely to be subject to child protection plans or looked after than their counterparts who live in the least deprived neighbourhoods. MacAlister (2022) reports that the number of looked after children in England rose from about 70,000 in 2015 to 80,000 in 2020 and estimates that it will rise to 100,000 by the end of this decade unless there is a fundamental re-setting of children's social care provision to enable families to receive more effective support.

At the conclusion of care proceedings the local authority is expected to implement an order made to it by the court in line with its care plan. It follows therefore that family justice is shaped by and in turn shapes child protection activity. For some families this follows a linear trajectory: child protection → care proceedings → child protection. However, for others the path is nonlinear as, for example: the local authority makes a second care application on the same child; an application is made to discharge or vary an order; a subsequent child in the same family is subject to a care application. Moreover, child protection activity is not put on hold during proceedings, particularly if the child remains in parental care. At a legal level it is crystal clear where family justice begins and ends – with an application and final order respectively. At a policy and everyday practice level I would suggest the boundary between the two is blurred. The government's approach to this in 2010/11 was to run two discrete reviews (Family Justice and the Munro Review of Child Protection) in parallel, with instructions to communicate with each

[8] The department of the local authority responsible for working with children and their families.

other. The reviewers did so and were polite about each other in print but, as will become apparent, their conclusions as to what shape policy should take and how it should be implemented could hardly have been more different.

Experience: helpful or unhelpful?

I started this thesis aged 65. In the rear-view mirror was over four decades of social work, much of it down the sharp end of child protection and family justice: a children's home, local authorities, a Child and Adolescent Mental Health Service, and then the National Society for the Prevention of Cruelty to Children (NSPCC) for 19 years in many different posts, during which time I co-authored two books on the assessment of families where infants had sustained physical abuse (Dale et al, 2002, 2005). For the final ten years of my career I was at Cafcass[9] in a post that was concerned with the integration of policy, practice and research.

Does all that experience help in the pursuit of academic competence? Cilliers (2016: p.81) is encouraging: 'in dealing with the complexities of the world there seems to be no substitute for experience (and education)'. Goffman (1989: p.128) has a different view: 'you have to be willing to be a horse's ass…that's one reason you have to be young to do fieldwork. It's harder to be an ass when you're old.' Not in my case. About a decade ago I undertook fieldwork in a Young Offender's Institution in which I was invited to take a seat in reception on a soft chair only to discover too late that it was soaked in (somebody else's) urine. The younger me would have been endlessly mortified. Older, I got over this and other such humiliations quickly, learned to take myself less seriously, accepted that being made to look like a fool periodically comes with the turf. And to extract meaning from every situation including, in this instance, recognising the sheer blind terror of the freshly incarcerated youth brought into reception and put on the chair, shortly before I arrived, as his bravado and bladder control went south. Within ethnography the using of one's own reactions to enhance understanding is referred to as 'reflexivity': we'll hear more about it in Chapter 4 and see it in action in Chapters 5 to 8.

[9] The Child and Family Court Advisory and Support Service, established to represent children in family court cases in England.

Experience was a help rather than a hindrance in writing this thesis, notably in understanding the field, making sense of abstract ideas by relating them to practice and, crucially, in helping me gain access to the court. Experience becomes problematic when it turns us into know-alls or dyed-in-the-wool cynics, reducing our curiosity, empathy and receptiveness to others' ideas and experiences. It is neither intrinsically good nor bad; what counts is how we use it. This is, I think, close to an idea articulated by Van Maanen (2011a: p. 220) as he encourages us to wear our knowledge lightly and to clear our head of preconceptions of what we are about to find and what sense we'll make of it:

> '*Often shaping fieldwork is the counter-intuitive idea that to become culturally astute and knowledgeable in a studied domain requires one to begin work from a state of innocence if not near ignorance. The position is that one's learning, insight, sensitivity, and eventual powers to represent are advanced by being clueless at the beginning of a study*.'

The challenge is to temper experience with humility, an open mind and a willingness to embrace the possibility that we may have hitherto misunderstood. I have tried to make judicious use of experience to illustrate a point while being mindful of Miles & Huberman's (1994) warning to avoid self-indulgence. Likewise, I have sought throughout to be receptive to new understandings, not only because that makes for better research but also because there is a special joy to be found in having expectations overturned, in seeing things differently, in gaining new insights, in recognising that our ignorance and occasional misstep do not distinguish us from the rest of humanity but confirm our place within it.

Structure of the thesis

Chapter 2 provides an account of Complexity Theory, what it is, its core tenets, strengths and limitations. Complexity's contribution to understanding how UK social policymaking is discussed, along with its application to matters germane to the thesis - politics, the law, public sector work and child protection.

Chapter 3 describes modernisation and the forces that have subsequently shaped family justice in England and Wales with extensive reference to the literature and research. It concludes with an evaluation of modernisation through

the lens of Complexity. An abridged version of this chapter and the previous one appeared in my published article (Green, 2021).

Chapter 4 describes the methodology for the empirical element of the thesis, an ethnographic study conducted in a court in England formed primarily of the observation of 33 hearings across 11 public law cases and 12 interviews with professionals. The literature relating to ethnography is discussed, including the various matters that the aspiring ethnographer needs to consider and how I tackled those. I discuss how access to the court was negotiated, the ethical challenges and compromises, and then how the analysis was conducted. The chapter concludes with barriers to, and limitations of, the study and some reflections.

Chapter 5 is the first of four chapters presenting findings from the court study. It is concerned with the public law cases that I observed, the difficulties that the families found themselves in, the challenges those difficulties posed for the court and the solutions the court turned to. The disparity between the legal aspiration for children (permanence) and the common reality is discussed. The chapter ends with a question that I return to later: are we expecting too much of the family court?

Chapter 6 discusses adversarial and consensual justice. At a formal level family justice is the former. In practice, I argue in this chapter, many matters in care proceedings are determined by consent. The motives of the local authority and parents to settle, wherever possible, are examined. I illustrate how proceedings periodically become adversarial and discuss what lies behind this. This is followed by examples of non-representation (parties who should have legal representation but do not), a worrying phenomenon in a system that is predicated on all parties being equally ‘armed’. The chapter concludes with a discussion of an accusation levelled at the family court: that it privileges parents’ rights above those of children.

Chapter 7 addresses the work of family court judges, starting with humanity – how that is communicated to parents and why it is important. It then moves to case management, which is one of the judge’s primary responsibilities but a matter over which, I argue, the judge does not necessarily have much control.

The chapter then revisits themes introduced in Chapter 3 with reference to observations of practice and professional interviews. Case management, I contend, is complex and difficult, particularly so in the context of high demand, full judicial calendars and gaps between hearings. I show how practice has developed in respect of restrictions set by modernisation (experts and timeframes) in ways that are at odds with modernisation's purpose and why that might be the case.

Chapter 8 is the final chapter that sets out the findings from the ethnography, in this case the sudden shock of the pandemic and its disruptive impact on the work of the family court. The HM Courts & Tribunals Service (HMCTS) reform programme to expand the use of technology in courts is discussed together with the literature relating to face-to-face and mediated communication. Three challenges to remote justice are debated: the quality of the technology; the barriers to fair justice; and system-wide problems. I then discuss leadership provided during Covid-19, including aspects of that which are problematic. The chapter ends with reflections on what has been learnt from the pandemic and Complexity-compliant proposals as to how the family courts may be helped to recover.

Chapter 9 provides conclusions: a summary of key findings, a setting out of policy implications, reflections upon Complexity and suggestions for future research.

Chapter 2: Complexity Theory

Introduction

This chapter describes the theoretical framework that has informed both my retrospective critique of family justice policy and my study of contemporary practice in a family court in England during the pandemic. The framework is variously referred to as Complexity Theory, Complexity Science or just Complexity. It is concerned with the properties of complex systems which limit the degree to which the behaviours of such systems can be predicted and managed. Most of the authors cited below self-identify as Complexity theorists, but I have not restricted myself to these. Rather, I have borrowed Byrne & Callaghan's (2014: p.10) pragmatic formulation of 'work than can be understood as complexity-consistent, even if not using its formal language'. This welcomes in the likes of Munro (2011) and Chapman (2004) who refer to systems theory in preference to Complexity, and Lipsky (1980) who was writing before Complexity established itself in the social sciences. It also draws in some who might be surprised to find themselves featuring here like the National Audit Office (see below) whose work nods in Complexity's direction, knowingly or otherwise.

The chapter starts with a description of Complexity: the framework's status, applications within the social sciences, some of its key assertions and its limitations. Then I move to the rational paradigm that has dominated public policymaking including family justice, providing explanations of rationalism's key tenets of determinism (we can control our environment) and reductionism (we can break phenomena down into their constituent parts and tweak them without unintended consequences) and the implications of these beliefs for policymaking. This is followed by Complexity's contributions to various subjects that are central to the thesis: policy, politics, the law, public sector practitioners and child protection. It ends with reflections, specifically regarding where Complexity stands in relation to the rational paradigm.

Complexity Theory: an outline

'Complexity fascinates and confounds' says Chia (2011: p.182). The former is my prevailing sentiment, and much of what follows is intended to be more than a

description of Complexity. Rather, I am making the case for Complexity being an important explanatory framework and thereby a mechanism for understanding policy and practice in public services generically, and family justice specifically. However, I've felt confounded too. Complexity is not a neat and tidy theory. In fact, it is not manifestly *a* theory. There is no clear consensus as to how it should be defined, where its boundaries should be drawn, how it should be applied, nor which theorists are most worthy of study (Webb & Geyer, 2019; Cairney & Geyer, 2015a, 2017; Johnson, 2015; Murray et al, 2018). Aspirations of one unified inter-disciplinary theory being constructed across the physical and social sciences were debunked by Horgan (1995), pointing out that a list of at least 31 definitions of Complexity were in circulation. Castellani & Gerrits (2021) have created a dynamic map of its evolving history that reveals a bewildering network of theories and applications. It is best understood then as a meta-theory that incorporates thinking from a variety of perspectives (Byrne & Callaghan, 2014; Webb & Geyer, 2019). This can give it a certain fuzzy quality (Kvilvang et al, 2019) and poses challenges, including getting to grips with its language and establishing whether terms are being used to denote the same or different phenomena (Cairney & Geyer, 2017; Tenbensel, 2015). The snappy one-sentence description of Complexity is consequently elusive (Pegram & Kreienkamp, 2019).

The challenge Complexity scholars have set themselves is to establish a solid empirical evidence base within the social sciences (Webb, 2015; Cairney & Geyer, 2015a). The Complexity net has been cast widely and is to be found everywhere in the field of knowledge (Byrne, 2005). Examples of Complexity being applied to different policy fields include: health (Cooper & Geyer, 2009; Geyer, 2012); the law (Webb, 2015); education (Szekely & Mason, 2019); child protection (Stevens & Hassett, 2007; Wastell at al, 2010); local government (Bovaird & Kenny, 2015); asylum (Webb, 2018); national and international politics, war and terrorism (Geyer & Rihani, 2010), state planning (Innes & Booher, 2010). A personal favourite is Plowman et al's (2007a) account of the semi-spontaneous transformation of a moribund church in a USA city into a thriving community centre for the homeless. There are many others (see, for example, Urry 2003). Taken together they represent a substantial departure from and challenge to the dominant rational model of policymaking. I am unaware,

however, of Complexity being applied to UK family justice before the publication of my article (Green, 2021).

Complexity's core proposition is that linear and mechanistic views of the world are of limited value when explaining complex social phenomena that are characterised by uncertainty and unpredictability **(**Regine & Lewin, 2000; Marion & Uhl-Bien, 2001). It adheres to the tradition of systems theory (Chettiparamb, 2014), specifically soft systems theory (the soft denoting the application to social systems), hence the focus on the properties of systems like family justice that entail extensive human activity. Two key related concepts are the Complex Adaptive System (CAS) and emergence. Subtly different definitions of a CAS are proposed - see, for example, Bovaird (2008); Byrne & Callaghan (2014); Innes & Booher (2010); Stirling (2014); Ruhl (2008); Stacey et al (2000); Fish & Hardy (2015). A CAS is commonly depicted as comprising numerous agents that interact with other agents in the system and with the external environment, thus creating elements of order and disorder (described as far-from-equilibrium or edge-of-chaos), self-organisation, new system properties, myriad potential outcomes and unpredictable long-term evolution. Small changes can have major impacts and vice-versa (Human & Cilliers, 2013) because of positive and negative feedback loops (continuous communications between members of a system) that amplify or dampen adaptive behaviours. A CAS is in a constant state of flux: it will break down if either it becomes too disordered or if it is too inflexible to adjust (Webb & Geyer, 2019; Webb, 2018). A degree of disorder within a CAS should therefore not be feared but welcomed in moderation as it protects the system from stagnation and provides opportunities to be creative, learn and adapt (Cooper & Geyer, 2009; Allen & Boulton, 2011).

As I suggested in Chapter 1, a family can be construed as a CAS. So too can organisations and public services (Chapman 2004) and one can readily identify characteristics of family justice that might amplify its pre-disposition to organic growth, constant flux and surprise: around 150 local authorities in England alone; 42 Designated Family Judge (DFJ) areas; various professional disciplines; judicial independence; about 60,000 private and public law applications a year; and life-changing decisions made by the court. Viewed through the lens of Complexity, family justice is more than the aggregation of its parts. Its nature is

forged by the myriad exchanges between the humans who operate within it and by its connections to other systems (child protection, the framework of laws and rules) creating strange phenomena, outcomes that become less foreseeable with the passing of time and a nebulous link between cause and effect. This process is referred to as emergence, the implications of which are that the policymaker's capacity to predict and control is limited and likely to be eroded in time as the system adapts in nonlinear and unintended ways. Lindblom (1959: p.86) expressed this idea elegantly over 60 years ago: 'making policy is at best a very rough process…a wise policy-maker expects that his (sic) policies will only achieve part of what he hopes and at the same time will produce unintended consequences he would have preferred to avoid'.

The challenge for Complexity theorists is to extend its influence beyond its current academic and theoretical arenas and to help it break into the mainstream where it can exert a more material impact on policymaking. Innes & Booher (2010: p.30) are optimistic predicting that that Complexity will come to be seen as having 'caused a revolution in thinking that affected every branch of knowledge'. Hobbs (2019) is more cautious setting out two visions of public service leadership in 2050, one in which Complexity is central and the other where it is peripheral. The barriers to Complexity becoming more influential are sizeable and systemic, requiring a paradigmatic shift among political leaders, media and the public to the point that recognising the limits of one's ability to predict and control are considered as signs of maturity in the policymaker, maybe even wisdom, rather than an indication of weakness and incompetence. Complexity's ontological and epistemological position, which leans towards the pluralist – there are multiple versions of reality, our knowledge is necessarily circumscribed and contestable (Cairney & Geyer, 2015b; Webb & Geyer, 2019) - may work against it in the cut-throat world of contemporary politics. Many Complexity theorists prize humility (for example, Murray et al, 2018), a word that features in many texts on Complexity, but a quality rarely observed in political leaders or national policymakers (Chapman, 2004).

Nonetheless, incursions into the mainstream have been achieved, including the field of child protection, and these will be examined further in this chapter. An example from health is the National Audit Office (2018a) report into the

substantial rise in emergency hospital admissions at a huge cost, to the detriment of some patients such as the elderly who swiftly lose mobility, and which reduced the capacity of hospitals to undertake routine care.

The rational paradigm

What is the rational (or orderly) paradigm (or model) – or just rationalism - and why has it exerted such influence upon policymaking? It dates back a good 200 years and is associated with extraordinary advances in the fields of philosophy, science and industry (Geyer & Rihani, 2010). Confidence grew in the power of humans to understand, predict and control their environment (determinism), as did a belief that phenomena could be broken down into their constituent parts and amended without implications for other parts of a system (reductionism) (Geyer & Rihani, 2010; Webb & Geyer, 2019). The traction this paradigm gained within the natural sciences led to it seeping into the social sciences and the proposition that human systems were subject to the same rules as the physical sciences. The assumptions of rationalism remain deeply embedded in UK public policymaking. One assumption is that order is inherently good, disorder inherently bad and a goal of policy is therefore to promote the former and reduce the latter. Another is that targets and performance indicators, supported by audits and inspections, are useful mechanisms for policymakers to impose order. A third is that the optimal response to a floundering policy is to tighten the rules. A fourth is that governments should prescribe in detail how their policies are to be enacted (see Geyer & Rihani, 2010 and Geyer, 2012, for a fuller discussion).

These assumptions have permeated UK public policymaking, shaping child welfare (see later in this chapter with reference to the Munro Review which challenged them) and the modernisation of family justice (see following chapter). They are also to be found in other public services – health and education for instance – in the practices of one recent administration after another: the Conservative ones of the 1980s and 1990s where the market was encouraged under New Public Management (Munro, 2010); the Evidence-Based Policy-Making of New Labour (Ansell & Geyer, 2017); and the ‘What Works’ philosophy of the subsequent coalition administration (Bovaird & Kenny, 2015). Policymaking, as configured by the rational model, is a top-down hierarchical

process with a delineation between the centre (government and the civil service) that makes policy and local actors who execute it. Rationalism holds that policymaking follows a linear sequence replicable across the public services: a problem is identified; solutions are researched; the policymaker chooses the optimal solution; others implement it in line with the policymaker's vision; the impact of the policy is evaluated leading to the policy ending or continuing as it was or with adaptations made by the centre (Cairney, 2016; Innes & Booher, 2010). The selective use of evidence serves to authenticate the policy and to provide the public with a sign of how well/badly the public services they use, and fund, are functioning. This model and its constituent parts are commonly referred to as the 'Westminster model' as they have dominated the post-second world war political process (Webb & Geyer, 2019).

Such is the dominance of these assumptions that mounting a persuasive challenge is difficult (Innes & Booher, 2010). Chapman (2004) argues that individuals are resistant to changing their modes of thinking and acting unless these are demonstrated conclusively to have failed. The rational paradigm is seductively simple, and relatively easy to 'sell' in the current political context of soundbites and rolling news. Modern politics thrives on the distillation of knotty problems down to three-word slogans – get Brexit done, strong and stable, take back control, stay at home. Complexity does not lend itself to such reduction; its precepts of uncertainty, emergence and such like are not fertile territory for sloganizing. It is also comforting, particularly in times of national crisis, for citizens to believe that governments are in control, that order will hold sway over disorder and that there might come a time when policy is so stable that it barely requires any human attention. A cynic might retort, with reference to recent history, that it doesn't require Complexity to crush such hopes: being conscious for fifteen minutes a day between 2016 and 2022 should suffice. Be that as it may it would be a brave policymaker who would declare the limits of their wisdom and power to command and ask not to be held accountable for matters over which they have limited control, but rather held responsible for the quality of the decisions they make (Cairney & Geyer, 2017). One thing we can state confidently is that there would be others conflating this with weakness in pursuit of their own ambitions (Hobbs, 2019).

Complexity and public policy

The complex adaptive system and the wicked problem

Complexity does not refute all elements of the rational model, arguing that it is not 'wrong, but rather it is limited in its rightness' (Byrne & Callaghan, 2014: p. 19). Complex systems are not random or chaotic (Cilliers, 2016; Silva, 2010). There is an order to them, but it is born of emergence and thus resistant to being readily steered. The problems generated by a CAS are commonly referred to as wicked (Rittel & Webber, 1973; as cited by Devaney & Spratt, 2009). Wicked problems are unique, dynamic, morally ambiguous, resistant to definitive formulation or irrefutable solution. They might be a symptom of another problem and attempts to fix them may create problems in other parts of the system. Claims as to what works with wicked problems should be modest as evidence is partial and contextual. An intervention that is successful in one situation may fail in an ostensibly similar one (Byrne, 2013), the temporal and geographical context being crucial (Fish & Hardy, 2015; Walton, 2016). Assumptions of a direct link between actions and outcomes may be erroneous (Chapman, 2004; Bovaird, 2012), notably so in the field of child protection where outcomes are notoriously hard to define (Forrester, 2017; Dickens et al, 2019). Wicked problems are more responsive to pragmatism, trial-and-error, constant learning and adaptation than they are to unresponsive long-term plans (By, 2005; Cairney & Geyer, 2015a; Ansell & Geyer, 2017).

To illustrate a CAS tackling a wicked problem, let's imagine a primary health care centre concerned about longer waiting times for its patients to receive a General Practitioner appointment, and compare it to a garage fixing a car that won't start. Pinpointing the causes of the rise in waiting times proves challenging. Staff have different views as to the solution. The temptation is to adopt a fix applied successfully to other centres but there is no guarantee of the same result in this context. Whatever decision is made risks bringing unintended consequences across several domains: accurate diagnosis and treatment of illnesses; re-presentations to the surgery; referrals or presentations to other tiers of health care; patient satisfaction; staff wellbeing. Some of the 'good' characteristics of the centre may change as well as the 'bad' (Ruhl, 2008). The impact may be felt

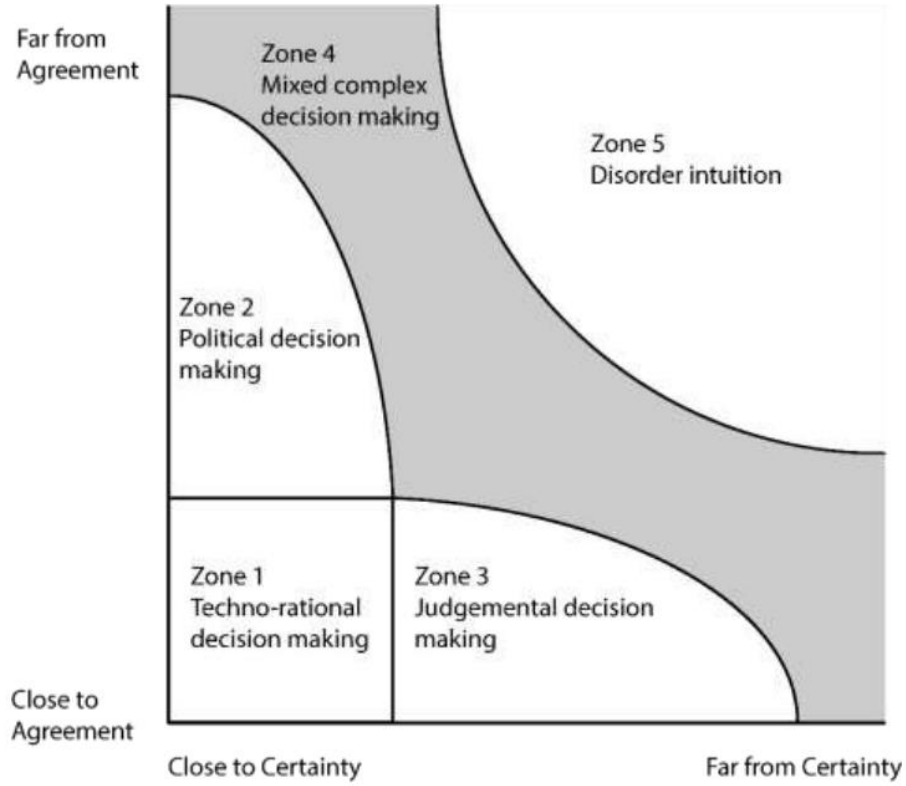
elsewhere, waiting times dropping in the centre but rising in A&E. A degree of control over the outcomes can be exerted by data-gathering with flexible and pragmatic decision-making (Webb & Geyer, 2019). Declarations of success should be modest. If the new policy does not work it can be scrapped but the centre cannot be returned precisely to its previous state (Ruhl, 2008).

Conversely, the garage has a tame problem. It requires modern technology and a skilled workforce, but the garage is expected to identify the problem, isolate it, resolve it in a set order and for there to be no impact on other aspects of the car's functioning. Unlike the health centre the fix can be replicated in the expectation of achieving the same result.

Where does the rational model fall short?

The unsuitability of techno-rational or mechanistic solutions to wicked problems is proposed by the Stacey diagram (Stacey 1993). It has been adapted by Gray (2015) and Webb & Geyer (2019) whose diagram appears here:

Diagram 1: Stacey diagram, modified by Webb & Geyer (2019)



Webb & Geyer's (2019) version of the Stacey diagram is used to differentiate between categories of a policy problem (in their case, attempts to simplify

legislation) and to identify the kinds of strategies that might resolve them. Thus, techno-rational solutions, characterised typically by tighter prescription, performance indicators, targets and timeframes, are suited to zone 1 problems where there is a high degree of certainty as to the nature of the problem together with a high degree of agreement as to how the problem should be fixed. Zone 4 is, however, the zone in which most policymaking belongs (Webb & Geyer, 2019) by virtue of high uncertainty as to the precise nature of the problem and the contested quality of answers. The lack of fit between (wicked) problem and (techno-rational) solution within family justice is a theme I shall return to.

A fundamental problem with the rational model is, in the eyes of Complexity, its conflation of tame and wicked problems and its propensity to apply mechanistic solutions to both. It is ill-suited to describing or devising complex systems, and of limited merit to the field of public policy (Astill & Cairney, 2015). Complexity re-writes the claims of the orderly paradigm by the addition of the prefix 'partial', suggesting that we can understand, predict and control phenomena to some degree and for some time (partial determinism), and that some phenomena are reducible but others need to be tackled holistically (partial reductionism) (Geyer & Rihani, 2010; Ansell & Geyer, 2017). Government expectations of what it can control exceed its actual powers (Cairney & Geyer, 2017). A host of factors determine whether policy follows the path envisaged by the policymaker or takes off in another direction (Byrne & Callaghan, 2014): organisational cultures; the individual and collective capacity of humans to interpret and shape our worlds; the sensitivity of systems to initial conditions ('path dependence') whereby a momentum is established and changing course is difficult; the strange ways in which the effect of some actions is amplified and the effect of others dampened (Cairney & Geyer, 2015a, 2017) by attractors. Attractors are phenomena that push social systems in one direction or another, thereby lending them a degree of temporary order (Haynes, 2007) such as an inspection regime, children's services converting to a trust, the decision to hire permanent rather than agency social workers (see Smith, 2019, for a fascinating discussion of how these and other attractors operate in concert/tension within child protection). The problem with mechanistic policymaking is brilliantly illustrated by a metaphor devised by

Plsek (2001, as cited by Chapman, 2004) – policymakers assume that they are throwing a rock whereas they are throwing a live bird.

So, the focus of Complexity is primarily on the interactions between the constituent parts of the system, the meaning or identity of which emerges from the ways the parts communicate with and behave towards each other, leading to system self-organisation (Room, 2015) that may or may not accord with the policymaker's aspirations. It recognises that humans are not machines: we have consciousness and will, we interpret and act purposefully, we are 'not just describers of the world. We are actors in it and our actions have constitutive and transformative potential in relation to it' (Byrne & Callaghan, 2014: p. 66). Our behaviour is influenced by emotive and psychological dimensions (Little, 2015) and we are disinclined to follow instructions indefinitely (Hobbs, 2019). If the values underpinning a policy are congruent with practitioners' values the prospects of the policy taking hold are raised. If they are not, the policy may stutter or fail, an example being the Best Value policy of New Labour which was thwarted by local resistance to top-heavy centralisation and inflexible 'tick-box' inspections (Bovaird, 2008). Complexity acknowledges that leaders are under pressure, from forces above and beyond personal vanity and hubris, to appear to be in control (Chapman, 2004) but proposes that control is in some measure an illusion. We are invited then to draw the conclusion that the making and implementing of policy is considerably messier than rationality would propose, and that putting forward simple solutions to wicked problems is doomed to fail (Harris, 2013).

I turn now to some other theories within the Complexity framework relating to politics, the law and public sector staff, before looking at Complexity's contribution to child protection.

Complexity and politics

This section draws on the Multiple Streams Framework (MSF) and Punctuated Equilibrium Theory (PET). Both have an interest in governmental decision-making, how policies are made, why some rise to the top while others do not, what causes policy to change (Cairney & Jones, 2016; Cairney & Geyer, 2015). Further, both present a 'real world' view of politics incorporating the notion of bounded rationality, that is the inescapable constraints to which humans are

subject regarding what they can know and how much data they can process. This view diverges substantially from the rather idealised version presented by the rational model of policy being created in a linear and coherent manner. The theories contest the rational model's assumption of a direct and unproblematic link between evidence, policy and outcomes (Cairney, 2016).

According to the MSF (Herweg et al, 2017) politicians are subject to time constraints. Decisions may need to be taken quickly and several problems may require their attention. They may have a surfeit of conflicting evidence and advice. The need to break reality down into manageable segments and thus simplify (Morçöl, 2015: p.52) obliges them to address competing demands selectively and serially (Cairney, 2016), hence the propensity to fall back on policy preferences, solutions put forward by interest groups or 'off-the-peg' policies borrowed from other countries, which do not automatically translate from one cultural context to another as 'direct implantation of political institutions…is a virtual guarantee of institutional failure' (Geyer & Rihani, 2010: p.75). Cognitive shortcuts and heuristics come into play (Oatley, 2019). To compound matters there are turf wars between departments and between ministers and civil servants, confusion around role boundaries and 'fluid participation' as decision-makers come and go.

MSF contends that there are three streams of processes – problem, policy and political – that for the most part operate independently of each other. However, for a policy to rise to the top of the political agenda there must be stream dependence, that is a coalescing of the three processes:

- Problem stream: there needs to be a body of opinion that there is a problem and what its nature is. This of itself does not guarantee it receiving political attention. There have, for example, been many voices raised regarding the parlous state of adult social care, but it has received precious little sustained political attention. Something needs to propel it onto politicians' to-do list.
- Policy stream: coalitions form of, for example, academics, pressure groups, civil servants, and researchers to thrash out solutions that can then be put forward for politicians to take up at an opportune moment. The theory is interesting not least for its counter-intuitive contention that the solution may precede formal acceptance that there is a problem – the solution is 'chasing

the problem' (Cairney & Jones, 2016: p.40) rather than, as conventional wisdom would have it, vice-versa.

- Political stream: the policymaker is inclined and able to pay attention to the problem. This is more likely to occur under certain conditions, such as media interest, a shift in the national mood or a new minister wishing to make their mark. A weak political stream means that a policy may remain in force even if the policy stream regards it as unproductive or counter-productive, as will become apparent in subsequent chapters when addressing legal policy to counter delay in care proceedings.

The PET echoes many of these assertions (Baumgartner et al, 2017). A core observation is that policies are commonly characterised by stasis, that is they tend to remain stable or subject to small and incremental changes. Government attention moves on and actors adapt to the policy, making it more difficult and costly to depart radically from it. The exception to this is known as a lurch – a dramatic event, extensive and critical media interest or a sudden shift in the public mood – which forces a matter rapidly up the list of political priorities (Baumgartner et al, 2017; Bovaird, 2008). The discrepancy between the flow of information to political leaders and their capacity to process that information leads to disproportionate responses, under-reaction alternating with over-reaction. The stop-start tempo of much political activity appears at odds with the dynamic qualities of a CAS.

Complexity and the law

The law is a social construction necessitating judgement and discretion, 'not just mindless interpretation' (McBride, 2017: p.9). The true nature of law, according to Complexity, is not to be found in the words that form the legislation but in how the many actors and institutions interact with each other to make law from the bottom-up (Murray et al, 2018). Where there is thought to be too much latitude as to how the law is being implemented a temptation is to make it more specific but rather than produce more certainty this may simply stifle the ability of the law to respond fairly and effectively to unusual cases (Webb, 2015). The law is both complicated and complex (Ruhl & Katz, 2018; Ruhl, 2008), dense and

unintelligible to non-lawyers but also constantly in flux as it is interpreted and practiced on the ground.

An influential work in exploring law's complexity is Nonet & Selznick (2001) which argues that the law is subject to social influences and has social consequences, and that it has three basic states: repressive when, for example, paying scant attention to pressing issues of welfare or justice; autonomous when exercising authority as a check and balance to government authority; responsive when committed to substantive justice. In this last state, they argue, justice is concerned with identifying and adhering to the implicit values or the spirit of the law rather than just the rules. Slavishly following the rules detaches the law from social reality and reduces its potential to solve the problems it seeks to resolve. When acting responsively the law has more potential to deliver fair and effective justice. An example is provided by Innes & Booher (2010) involving the resolution of a bitter simmering conflict between the African American population in one area of Cincinnati and the city police over what the former saw as racial profiling, specifically in the context of pulling over and searching drivers. In response to the filing of a class action the court paused its determination to permit the negotiation of an agreed settlement.

There are echoes of Nonet & Selznick's (2001) work in literature that is concerned with family justice in England and Wales. King & Trowell (1992) see the law as fulfilling moral functions such as establishing what is acceptable and unacceptable behaviour by parents, weighing up the respective rights of family members in proceedings and deciding what can and cannot form the basis of an application to court (harm caused by the parents is permitted, whereas harm derived from government policies is not). The law is not generally required to consider the welfare of its subjects (Diduck 1999) family justice being an exception. Establishing the child's best interests entails a consideration of numerous complicated and dynamic issues - the history of harm, the child's wishes and needs, parental motivations and capacity, the role of the extended family – which under our system are distilled down to a binary decision at a particular point in time. Cooper (1999) sees such decision-making as militating against the production of good justice or outcomes for children and concludes

therefore that judicial norms and practices will develop, and rightly so, in response to the myriad human problems they must deal with.

The influence of Complexity is apparent in Broadhurst's (unpublished) study of migrant children who become subjects of care applications. This is a messy area of international law with different jurisdictions and competing cultural values, notably regarding adoption without parental consent. The crux of the argument is that actors are obliged to interpret the law, turning it from law as set out in the statute to law-in-action. Lawmakers are then prone to frame court judgments as being non-compliant or deviant and the solution as being tighter prescription. No amount of detail inserted into the amended law will remove the necessity for the law to be interpreted on the ground. Hence, as illustrated by the cases examined in the migrant children study, the situation arises whereby different levels of court draw different conclusions.

Complexity and public sector practitioners

Street-level bureaucrats is the term coined by Lipsky (1980) to denote workers in public services such as social workers, court staff, police and teachers who interact with and have much discretion over the decisions made regarding their clientele. He sees them as having to manage a perennial paradox: on the one hand their work is defined by the policy objectives they are expected to implement which tends to lead to a mass processing, while on the other hand they must respond flexibly to individual situations in case exceptional treatment is merited. By virtue of their professional standing and the nature of their work, which is relatively free of supervisory scrutiny, they have much power to determine whether and how policy is implemented. Their compliance should not be taken for granted. This, in Lipsky's view, brings them into conflict with management who seek to keep some measure of control over the policy agenda through performance management, a strategy that is flawed if the policy goals are ambiguous or if it is unclear whether the measure reveals better or worse performance. The introduction of too many measures means they cannot all be met. There is also, he argues, a potential for them to distort practice as street-level bureaucrats become too focused on meeting them rather than delivering a quality service.

Lipsky's work refutes some of the rational paradigm's assumptions, specifically that the policymaker knows best, is in control, and dictates how practitioners respond. Similar themes are explored by more recent studies including child protection research presented in the following section. Discussing adult social care Evans & Harris (2004) and Evans (2011) argue that increasing regulation is generally counter-productive, leading to confused and conflicting instructions thereby allowing practitioners more latitude in what they chose to follow. In the field of public health care Bevan & Hood (2006) describe how targets are manipulated or 'gamed', sometimes in a manner that is manifestly injurious to the patient such as keeping patients in an ambulance to reduce the recorded waiting period in A&E, reframing trolleys as beds and being reluctant to operate on high-risk cases lest they elevate the mortality rate. They further argue that targets are founded on an erroneous assumption that the whole service can be evaluated by measuring one part of it and that the practitioner has a good deal of wriggle room in interpreting what constitutes, for example, a life-threatening emergency. Preston-Shoot (2001: p.14) sees the increased regulation in social work as a flawed response to a drop in confidence in professional practice – 'a failure of thinking about complicated truths', especially where measures and targets are imposed from above (Locke & Latham 2002; as cited by Wastell et al, 2010). Targets are unhelpful other than when used sparingly to measure simple phenomena (Geyer, 2012). Practice is influenced by local management and by group cultures, and may pay little heed to regulation, regarding it as a nuisance or a barrier to helping service users.

Complexity and Child Protection

Complexity's contribution to child protection is long-standing. The 1974 public inquiry into the death of Maria Colwell, perhaps the earliest example of social work being publicly put in the dock and pronounced guilty, produced a minority report by Olive Stevenson, unhappy that the majority report had not grasped the challenges and complexities of child protection work, notably the lack of clear options and the unpredictable outcomes of decisions (Parton, 2014: p.2046). The tension between criticising individuals and trying to understand why things can go so wrong (without defending the indefensible) has not gone away. Lord Laming, in his report into the death of Victoria Climbie, bemoaned the failure of

many individuals and agencies to get the simple things right contending that 'it required nothing more than basic good practice being put into operation' (Laming, 2003: p.1). While agreeing that grievous individual and collective errors were made, we might feel queasy about the moral and intellectual certainty of this conclusion, wondering whether the author has downplayed the highly charged nature of interactions that typically occur when the child protection professional meets the family (Reder et al, 1993; Cooper, 2005). Basic good practice can prove elusive in the context of mutual anxiety, antagonism, power differentials, contested facts and weighty binary decisions.

I provide three recent examples of Complexity being applied to child protection drawn from different fields – policy, practice and academia.

The Munro Review (policy)

Professor Eileen Munro was commissioned by the Secretary of State for Education in June 2010 to produce an independent review of child protection in England. A systems analysis was published in 2010 and a final report in 2011.

The Munro Review was by no means the first expression of disquiet at the growing influence of regulation and bureaucratisation of child protection social work. She had previously been a vocal critic of audit culture (Munro, 2004) arguing that, while social workers should not have unfettered discretion, the over-reliance on auditing as a management tool had reduced the skills and intricacies of the work to a scrutiny of the paperwork, diverting professional energy away from improving outcomes and towards meeting targets. In Munro & Calder (2005) she expressed concerns that government-imposed bureaucratic demands were diminishing professional focus on the core business of protecting children. Others took up the refrain. Parton (2011) described how statutory guidance (HM Government, 2018) had grown from seven pages in its original iteration to some 400 (nearly double that amount if supplementary guidance was included), and that it was expected to be used alongside a standardised framework for assessment which itself was accompanied by a suite of materials. Regulation risked slipping into self-parody.

The Munro Review provided an opportunity to explore these ideas more holistically and on a bigger stage. It argued that previous reforms were well-

intentioned but had brought unintended consequences. Prescription had increased to counter drift and mitigate the catastrophic errors of high-profile cases but had induced a pre-occupation with meeting targets and compliance. IT acted as a barrier to good practice, mandating the completion of lengthy and repetitive forms. Double-loop learning (are we doing the right thing?) had been sacrificed on the altar of single-loop learning (are we doing what we've been told to do?). Service provision had suffered and staff morale dipped.

As one might expect from her analysis Munro proposed less bureaucratisation and more practitioner discretion - the scrapping of timeframes for assessments, a reduction in rules and guidance, the steering of inspection regimes away from the techno-rational elements of the work and towards the human ones. Her recommendations were also characterised by a promotion of local responsibility. Local areas should: establish whether the assessment of and help to families was being provided effectively and in a timely manner; draw on research and theory to inform their practice; be free to innovate rather than be bound by national approaches (Munro, 2011: p.21). These proposals chime with a Complexity-informed view of leadership within a CAS (for example Plowman et al, 2007b; Harrison, 2003; Marion & Uhl-Bien, 2011) – that it should rein in centralised control in favour of enabling actors to adapt to local contexts and changing circumstances.

Reclaiming social work (practice)

Reclaiming started life in the Borough of Hackney as an effort to model and deliver children's social care functions on systems theory. Its establishment and principles were set out by its founders (Goodman & Trowler, 2012). It was subject to a detailed and positive evaluation (Cross et al, 2010) and cited favourably by Munro (2011) in her review. The model was then adopted by other local authorities and subject to a further evaluation (Bostock et al, 2017) of a project funded by the Children's Social Care Innovation Fund to embed the model in five dissimilar local authorities.

A core purpose of Reclaiming was to counter the trend in children's social care towards mechanised and bureaucratised responses, and to go back to the roots of social work in promoting meaningful relationships between service users and

staff. Rules and procedures were kept to a minimum. Social workers were encouraged to be humble and inquisitive, and to work with families to resolve problems. Managers were exhorted to take an active interest in practice and avoid blame when things went wrong, seeing such events as opportunities to learn and amend the system. The service was delivered by small units which included a family therapist/clinician and which held joint responsibility for cases. The evaluation (Cross et al, 2010) found that Hackney fared well compared to other authorities in the National Indicator Set, and that it had significantly reduced the number of looked after children and days lost to staff sickness.

Reclaiming was taken up by at least 30 other local authorities. Forrester et al (2013) conducted a comparative study of three local authorities, one that had embraced Reclaiming and two that worked in more conventional ways. They found factors that contributed to sound practice irrespective of delivery model – good IT and administrative support, small teams, realistic caseloads, recruitment of high-quality staff – but also elements of the systemic model that promoted good practice, specifically the principle of shared allocation which pushed staff to discuss cases constantly, augmented professional development and provided a range of different types of help for families. However, recent inspection reports in Hackney have not been positive (Ofsted 2019a, 2019b)[10]: 'the determination of workers to work alongside families to achieve change, combined with an overly optimistic assessment of parental ability or willingness to change, has led to overly adult-focused work' (Ofsted 2019a: p2). Further, doubts have been cast (Bostock et al, 2017) about how readily the model can be grafted onto other authorities, context being so influential (time, place, staff, political support etc). There have been problems of cherry-picking bits of the model and in finding staff with the skills and experience to fulfil the consultant/head of unit roles (Community Care, 2013). The attempts to up-scale Reclaiming have had some success but they seem to have hit systemic problems: the availability of suitable staff coming out of training and 'through the ranks'; the need to have senior managers with the skills, drive and charisma to take staff with them; issues of

[10] Hackney is far from alone. Ofsted (2020) found one-half of children's services either required improvement or were inadequate.

political will when the going gets tough or money is tight; inspection regimes that focus narrowly on what can be counted.

Whether the policy and practice direction set in train by Munro and Reclaiming thrives into the 2020s or falters remains to be seen. The Blueprint for Children's Social Care (Frontline et al, 2019) tried to breathe new life into it. It argued that much current service provision is still bedevilled by the philosophy of New Public Management: excessive oversight; control and command; overbearing performance management; social work experience being drained from front-line work to service the exigencies of top-heavy management. This is a familiar refrain from the Complexity songbook and it is well-evidenced and argued. It is not uncommon to find five layers of management between a Director of Children's Services and front-line practitioners, and one-half of qualified social workers do not hold cases (Department for Education, 2019). Social workers self-reported spending two-thirds of their time on paperwork and just a fifth on direct work with families (BASW, 2018). Social work is beset by low morale and difficulties in retaining good staff.

The Blueprint's startlingly radical vision was to create family facing teams which have autonomy over all decisions other than those that have major financial implications, including the bringing of care proceedings. The teams would have no designated manager, hold collective responsibility for budget management, recruitment, and agreeing how they are to work together. Other teams exist to support rather than manage them, all layers of management being stripped out other than a strategy team whose role is limited to such matters as maintaining relationships with stakeholders and dealing with breaches by staff of team rules. Benefits would, it is claimed, include more time for direct work and reflection, and at no extra cost. My enthusiasm for the Blueprint's ambition is tempered with nervousness at some of its proposals. Self-managing teams? An executive with practically no authority? I don't entirely share the authors' faith in peer groups operating harmoniously to deliver a statutory service without any of the checks and balances good management provides. I note Cilliers (2016) argument that complex systems need hierarchies. I fear focus would be lost and rather too many internecine conflicts break out. I foresee chaos rather than constructive disorder.

Child protection ethnographic studies (academia)

Ethnography is a qualitative method of conducting research entailing the observation of social groups as they undertake their various activities – work, leisure, political, domestic[11]. It is commonly associated with digging beneath the surface, understanding subjects' experiences, forming a bridge between macro and micro perspectives, grasping the disconnects between formal and informal accounts of how things work.

Five post-2010 studies[12] are presented in this section, the first four drawn from child protection activity and the final one from family justice. They were selected as they demonstrate the capacity of ethnography to illustrate the complexities of child protection work in the community and in court (see Ferguson, 2016a for a comprehensive account of research that has made use of observation to explore child and family social work) the limitations of techno-rational solutions, and the ways in which practitioners go about their daily business.

Wastell et al (2010 – see also Broadhurst et al, 2010a, 2010b) examined the impact on social workers of the demands of excessive bureaucratic control. It found that the over-use of indicators, targets, audits and timeframes, accentuated by inflexible IT systems, encouraged routinised practice at odds with the infinite variety of problems social workers are expected to tackle. The authors observed a range of workarounds - ways of dealing with the demands of bureaucratisation without directly confronting it and risking censure. In Wastell et al (2010) this response was likened to that of the Good Soldier Švejk – passively resistant, devoid of commitment, mildly subversive.

Ethnographic research undertaken by Whittaker (2018) and Saltiel (2016) were concerned with the interplay of knowledge and decision-making in child protection. The policy momentum has historically been towards promoting rational and conscious decisions, as typified by the proliferation of guidance and procedures, in the hope that this will counter fallible human judgement. Both of these studies question whether this is attainable, or desirable, given the

[11] A fuller account of ethnography is provided in the Methodology chapter.
[12] In line with the time parameters of the following chapter, the principal focus of which is from the FJR to the pandemic, approximately 2010 to 2020. The ethnographies cited were identified by 'snowball' reading and Boolean searches.

immanent uncertainty and ambiguity of child protection work. (Whittaker, 2018) found that practitioners developed sense-making processes that entailed quick intuitive judgements followed by analytic evaluation. Experience helped them to identify and focus on core pieces of data, to recognise the gaps in information and to triangulate information from different sources. Saltiel (2016) found that heuristic decision-making was common in frontline duty work and perhaps unavoidable considering the pressures upon them. Informal codes were applied to referrals and referrers, enabling them to be processed swiftly and to fulfil the unofficial function of duty teams to gate-keep.

In a suite of articles Ferguson (2016a, 2016b, 2016c, 2017, 2018) described a 'mobile' ethnography in which he accompanied social workers as they drove to the homes of families subject to child protection enquiries, moved around the house to look in bedrooms and bathrooms or speak to children in a private space, and then reflected upon the home visit while driving back to the office. Statutory guidance (HM Government, 2018) encourages social workers to see the child alone where possible. Ferguson found that there were substantial barriers to this being a meaningful activity or, in some cases, taking place at all. High workloads, organisational demands, parental hostility, professional anxiety and fear, the complexities and emotional intensity of the work, and an absence of training in how to build rapport and work effectively with children[13] all acted in, some home visits, as barriers to the child's experience being profoundly understood. Thus, the discrepancy was exposed between the aspiration of policy and social work education to produce child-centred work and the reality of everyday practice leading Ferguson (2016a, p.289) to conclude that 'a system which produces a form of practice where so little time is spent with children is deeply problematic and dangerous.'

The child protection studies discussed above demonstrate, inter alia, the Lipsky (1980) paradox of mass processing versus flexible response at work. Excessive bureaucracy, remorseless pressure and professional anxiety sometimes combine to produce routinised responses and to disengage the practitioner from the communities they serve. However, practitioners do not invariably adhere to

[13] Or with parent and children when the latter are young.

policies that affront their professional and personal values. Workarounds are created to thwart heavy-handed bureaucracy. These may produce routinised unresponsive practice or enable social workers to provide a good service. Either way, practitioners create policy as well as implement it.

Pearce et al (2011) examined family justice. Their study is cited on numerous occasions in subsequent chapters, particularly when discussing my findings regarding the adversarial/consensual nature of proceedings in MetroCourt. It argued that public law proceedings are formally adversarial (Lane, 2007 as cited by Masson, 2012). Thus, lawyers acting for parents seek to undermine the local authority's case and to persuade the judge to make decisions in line with their clients' instructions. However, observing lawyers in practice led the authors to recognise how lawyers operated strategically, seeking to engage parents in a realistic evaluation of what success in this case might entail, steering them away from entering battles they were unlikely to win and towards gaining the most favourable outcome in the circumstances. Lawyers recognised the importance to parents of empathy and feeling they had been heard. This required the building of trust and the use of skills that one might associate with a social worker rather than a lawyer: understanding their clients' vulnerabilities, providing emotional support, pushing for agreed solutions over court-imposed ones.

Reflections

Complexity will resurface at various points of the thesis when discussing family justice. For now, let's consider where it stands and what it offers to UK policymaking.

Complexity's strongest suit concerning UK policymaking is its critique of the hegemonic rational paradigm. A key argument is that determinism and reductionism hold firm applied to mechanical objects but wobble when used to prescribe complex social systems and the uncertainty derived from individual and collective human behaviour. Rationalist assumptions are rigorously challenged. Disorder is not intrinsically bad: it is both inevitable and potentially a source of creativity and positive change. Too much disorder may destabilise the system. Knowledge is indeed important, but it is commonly ambiguous and politicised. More of it does not guarantee greater clarity. Performance indicators, targets and

audits are useful mechanisms applied to tame problems, but not wicked ones. When over-used they distract and distort practice, sometimes innocuously or to give the professionals the chance to deliver a responsive service, but sometimes in ways that are patently harmful to service users. Rules are necessary to maintain a degree of order and purpose in public services, and to give users the recourse to reparations for poor service but an over-reliance on them squashes professional initiative, encourages faux-compliance and has the counter-productive effect of allowing practitioners to play off one rule against another. Competing demands upon our time and cognitive capacity mean that tinkering with parts of a complex system is sometimes unavoidable but we should do so in the knowledge that our actions will set in train events that we neither expected nor desired. Governments rightly set the strategy but should not dictate in detail how it is to be enacted until they are next able to turn their attention to it.

Where then does Complexity stand then in relation to the rational model? Is it preaching evolution or revolution? Closer to the former than the latter I think, at least for the time being. First, the argument is not that policy should uniquely be made upstream or that command-and-control management should cease forthwith. It is rather an argument for balance, adaptability, a humble acceptance of our limitations, for thinking differently. Secondly, rationalism is very firmly established in our political systems and discourse, and in our expectations of policymakers. I can see how various factors might merge to change this - opportunities for the young to learn about Complexity in higher education, Complexity building up its evidence base and getting out into the mainstream - but recognise that this will not happen overnight. Thirdly, Complexity is in a way hoist on its own petard. Its (rightful) insistence on emergence and the influence of context means that it cannot put forward the quick fix or cut-and-paste solution. It doesn't do sound bites and doesn't claim to have all the answers at its fingertips. This could prove painful. Imagine being the unfortunate soul under scrutiny by Paxman or similar, the voice heavy with scorn as the question is posed 'What would you do then after you've embraced uncertainty?' If Complexity is to become more influential, to revolutionise policymaking, it may have to resolve the tension between its beliefs on the one hand and ability to sell itself on the other.

As Hobbs (2019) suggests – see earlier in the chapter – it may take to the middle of the century before it becomes clear whether Complexity becomes central to policy design or sits at the margins. There is no rush. For now, I'm more than content with its provision of a robust analytic tool and curious to see what it can offer to family justice.

Chapter 3: The Modernisation of Family Justice

Introduction

The modernisation of family justice was launched by the Family Justice Review (FJR) (2011a, 2011b) in response to pressures on family justice and concerns about effectiveness which, in relation to public law, focused on concerns about delay. As I shall show, a techno-rational response to the thorny problem of delay in care proceedings had been previously attempted but the implementation of the FJR's recommendations in the Children and Families Act (2014) was the first time such solutions were set out in legislation. The Act stipulated a timeframe for care proceedings, as well as raising the threshold for the appointment of experts and restricting the scrutiny by the court of the local authority care plan. It was presented to professionals on the premise that it could bring efficiencies and help children by speeding up court decision-making.

Modernisation represented a significant shift in policy which, together with economic constraints, brought considerable upheaval during the first half of the 2010s to the courts and practitioners (Maclean et al, 2015). I argue in this chapter that the FJR was, in respect of public law, infused from its terms of reference through to the legislation that followed by the issue of delay in the making of decisions for children. I further argue that the public law reforms set in train by the FJR were, to adopt Byrne & Callaghan's (2014: p. 19) formulation, limited in their rightness: gaining broad professional consent and bringing short-term benefits, but subsequently generating professional concern regarding the impact of reforms upon children's welfare and the dispensing of fair justice.

This chapter provides a review of the research, policy and legislation germane to the MetroCourt study. It also provides a critique of modernisation and its roots in the rational paradigm. It starts by setting out the historical context of concern about delay in public law cases and previous unsuccessful efforts to counter it. That is followed by an account of the FJR, its framing of problems and the technical fixes it proposed. I then consider the landscape of family justice beyond the review, documenting the persistence of difficulties regarding delay, as well as unintended consequences. The chapter concludes with a focused analysis of modernisation through the lens of Complexity.

Tackling delay: before the Family Justice Review

Concerns about length of time to make decisions about maltreated children go back decades (Beckett, 2001). A fundamental premise, underpinning social work and the practice of the family courts, is that decisions about children's care need to be timely to provide the child with security and avoid institutions adding harm to that already experienced by the maltreated child. Dickens et al (2014) describe concerns about 'drift' within both child protection and the family courts emerging in the early 1970s. At its most pernicious this can form a type of secondary abuse whereby the state compounds the damage caused by abusive or neglectful parenting. Such concerns were amplified by research into the impact on children of prolonged exposure to emotional neglect, which many social workers had hitherto assumed was unlikely to cause serious harm to children (Stone 1998). Where the state fails to make decisive and timely decisions about children's care arrangements, then problems of insecure attachments, low self-esteem, emotional/behavioural problems and such like may be exacerbated (see Davies & Ward 2012 for a summary). Further, the past two decades have seen a growth in the research evidence which, although subject to some challenge, proposes a relationship between child maltreatment and neglect, and brain development and an increased vulnerability to future mental health problems (Gerin et al, 2019). The influence of these developments for both child protection and family justice, has been to encourage swifter action to protect (or remove) children from situations of neglect.

Within family justice, concerns about developmental harm threw the spotlight on care proceedings. The Children Act (1989) s1(2) sets out the general principle that delay in proceedings is likely to prejudice the child's welfare. When that legislation came into force in 1991 there was an expectation of 12 weeks being the norm (Dickens et al, 2014) for concluding care cases. History has proved this to be very optimistic given the administrative challenges – for example, a contested hearing can extend cases by weeks as those involved struggle to find a mutually convenient date (Broadhurst et al, 2013) – together with the inherent complexities and uncertainties of child protection matters that come before the court (Beckett 2001). As I illustrate later with reference to the MetroCourt ethnographic study, many features of a case are dynamic and potentially subject

to change: the order sought by the local authority; the care plan; the viability of alternative carers; the robustness of the placement; the understanding of the child's needs; the impact of parental mental capacity on the proceedings[14]; the prospects of parents providing adequate care. Some of these might be foreseen and contingency plans put in place but the unexpected also happens: a family member willing and able to take the child becomes seriously ill late in the proceedings; a respondent mother enters a new relationship or becomes pregnant. Such events have a systemic impact upon the case, the timeframe included.

The interim report of the FJR (2011a) reported at least seven prior reviews of family justice and various ad hoc amendments since the publication of the Children Act (1989) but found that the problems remained stubbornly in place, the principal one being delay. The Department for Education and Skills (2006) listed many factors contributing to delay: the quality of the local authority application; weak judicial case management; problems in obtaining timely and high-quality expert advice; Cafcass' failures to provide a children's guardian at the start of the case; alternative carers being identified late in proceedings. If delay can be unnecessary, as described by the Department for Education and Skills (2006), then there is also the possibility that the opposite state exists – that there are forms of delay which are necessary or constructive, the purpose of which is to further the welfare of the child. Attempts to reform family justice struggled to make an impact partially because there was professional uncertainty and contest as to the harmful or beneficial nature of lengthy proceedings. They can leave the child exposed to protracted abuse or neglect, disrupt attachments to temporary carers and undermine placements in the short-term and life chances in the longer (Brown & Ward 2013), but can conversely enable a child to remain safely in its birth family and facilitate the testing of a viable alternative placement (Masson 2015). These are inherent tensions in public law practice.

The main mechanism to counter delay was the introduction in 2008 of the Public Law Outline (PLO) that aimed to standardise the work of the family court. It was a techno-rational solution to a complex issue - a zone 1 fix to a zone 4 policy

[14] The extent to which the parent understands and can instruct is commonly hazy - see Broadhurst et al (2017).

matter to draw on the Stacey diagram (Stacey, 1993) - and thus, while it might have brought some efficiencies, it was most unlikely to provide an enduring solution. The PLO had, like an earlier protocol it replaced, a 40-week maximum timeframe for proceedings. However, the average time taken for a case to conclude rose. Numerous explanations for the failure of early iterations of the PLO have been proposed (Pearce et al, 2011; Masson 2015, 2017; Broadhurst & Holt 2010). These include reform being treated as an event rather than a process with judges receiving little support or oversight beyond some initial training. There was little leadership and few inducements for professionals to change their practice, in the absence of which family justice remained resistant to attempts to reform it.

The Family Justice Review

Terms of Reference

The Family Justice Review (FJR) was established under the joint sponsorship of the Ministry of Justice, the Department for Education, and the Welsh Government. It produced an interim report (2011a) and a final one (2011b). By my reading – Kaganas (2014) draws the same conclusion - only two of the terms of reference concerning practice relate to public law:

1. The interests of the child should be paramount in any decision affecting them (and, linked to this, delays in determining the outcome of court applications should be kept to a minimum).
2. The court's role should be focused on protecting the vulnerable from abuse, victimisation and exploitation and should avoid intervening in family life except where there is clear benefit to children or vulnerable adults in doing so.

There were also instructions to: examine the management of the system, specifically its governance arrangements and the introduction of more inquisitorial elements; and to take account of value for money issues and resource considerations (FJR, 2011b: pp.182-3).

The terms of reference relating to public law matters are curious. They are reiterations of principles already enshrined in s1 of the Children Act (1989). There was no discernible invitation to the review to inquire into why delay had proved

so hard to counter: the conflicting evidence; the professional ambivalence; the dynamic qualities of many care proceedings. The wicked qualities of delay (its contestability, ambiguity, moral complexity) were glossed over. Delay is bad period was the inference: go find a fix.

Framing of family justice's problems

The FJR formed the view that the principal reason previous reviews had had limited impact was attributable to the family justice service not functioning as a coherent and managed system at all. On this matter there was, it found, a consensus: there was a lack of leadership, management, co-ordination, trust, shared objectives, joined-up information systems. There were significant difficulties before proceedings (late applications, weak local authority evidence), during (frail case management, a lack of judicial continuity, weak administration provided by HM Courts & Tribunals Service (HMCTS)), and after (courts mistrusting local authorities to implement the care plan and therefore taking a disproportionate interest in the detail of the local authority care plan). There was too much emphasis on parental rights to be given a chance to demonstrate that they could provide safe care at the expense of children's rights for security and permanence. The FJR was not alone in expounding this latter view. Shortly after it published its final report Michael Gove, Secretary of State for Education, said that more children should be taken into care (Gove, 2012), the first time a government had explicitly set out such a view (Parton, 2014: p. 2052).

The consequence of family justice dysfunction was 'unconscionable delay' (FJR, 2011b: p.3). I have noted above that the initial aspiration for the conclusion s31 proceedings had extended from 12 to 40 weeks. The FJR reported that the average length of all cases at the point of publication was 56 weeks and in County Courts – one of the three tiers of court then in place – the average case took over 60 weeks. This was deemed problematic in two respects. First it was expensive – public law alone was estimated to cost the government over one billion pounds a year - and it put the system, already under stress from an increase in applications, under huge strain.

Secondly, the FJR argued that it had a detrimental impact on children who had to wait inordinately long for a decision as to who would care for them with various

potentially harmful consequences: anxiety, insecurity, changes of placement and a threat to the finding of a permanent placement. The child's need for permanency was not deemed to be congruent with proceedings that might last a year or more. Proceedings needed to conclude in a timelier manner and more robust enforcement was required.

Solutions to family justice's problems

The solutions fell into two categories: those designed to reform the operation of family justice as a system; and those designed to reform the operation of the courts in public law cases.

The systemic problem of a lack of leadership, coherence and co-ordination was to be addressed through the creation of a Family Justice Service. HMCTS and the social work service (delivered by Cafcass and Cafcass Cymru) would form the core of the new body, and the Chief Executive would report to a Family Justice Board. One of the delivery options was for HMCTS to head up the new body, though the review recognised that this might prove problematic as HMCTS had no experience of providing social work services. Cafcass was not identified as a potential lead agency, presumably because it had been subject to trenchant criticism in the field, in a series of local Ofsted inspections and by the Public Accounts Committee (2010).

In the event, a Family Justice Service was not established. In its formal response to the FJR the government (Ministry of Justice 2012: p.37) was silent on this matter other than saying it would 'consider what further structural reform is necessary', phraseology that presaged a direction of travel towards the long grass. Setting up such an organisation would have been expensive and therefore would not have commended itself to an administration committed to shrinking the public purse. Also, Cafcass had started to make progress, as acknowledged by Ofsted and, gradually, in professional circles. If, as was broadly assumed at the time of the FJR (not unreasonably I believe) that a hidden question for the review to address was 'how do you solve a problem like Cafcass?', then the problem had solved itself, and wrapping it up inside a new bigger organisation was no longer necessary.

Was the proposal to create a Family Justice Service sound? The tone of the final review report is notably tentative on what form such a service might take, acknowledging some of the challenges raised in feedback to the interim report. I am sceptical as to the viability of the proposal. Family justice is immensely complex, comprising countless members of diverse professions (legal and social work as a matter of course together with, less frequently, psychology, psychiatry, paediatrics, police etc), each having their own lines of accountability (none of which are *directly* to central government) training and ethics, quasi-professionals (foster carers) and family members. Further complexity is derived from professionals having diverse levels of autonomy (local authority social workers, whose work is heavily supervised, audited and inspected, having rather less than lawyers for example). Children's Guardians are appointed by the court but employed by Cafcass. Judicial independence is a cornerstone of the (unwritten) constitution. Over 21,000 children were subject to care applications in 2019-20[15], with a massively disproportionate number coming from poor backgrounds (National Audit Office, 2016). Tensions within the system are inevitable (Dickens et al, 2014). The recommendation, derived from rational thinking, that a master controller should be established to orchestrate all this dynamic activity with its human, moral, legal and administrative dimensions seems to me, in line with Complexity, to place an undue degree of faith in the power of executive control.

A Family Justice Board (FJB) was set up but with a more modest brief than was originally envisaged. Its purpose is one of system improvement, driving change and co-ordination: neither HMCTS nor Cafcass nor any other organisation is directly accountable to it. In 2012, Sir David Norgrove, who had chaired the FJR, was appointed as chair of the Board, but chairing has subsequently fallen to parliamentary under-secretaries at the Ministry for Justice and Department for Education. Local Family Justice Boards were also established to monitor and boost local performance.

[15] https://www.cafcass.gov.uk/about-cafcass/research-and-data/public-law-data/ (Accessed 4 May 2020).

Less ambitious structural changes, such as the replacement of three different tiers of court by one family court, were implemented and have, by common consent, been successful.

The other measures proposed by the review, those relating to public law practice within the court, found favour with the government. There were three inter-linked elements to this subsequently enacted by the Children and Families Act (2014). The first was a statutory timeframe of 26 weeks for care proceedings, with the court permitted to extend where necessary to enable the court to resolve the proceedings justly. When granting an extension to proceedings the court was required to have regard to the impact on the welfare of the child, the inference being that this would likely be detrimental. The 26-weeks timeframe would form a performance indicator, compliance with which would be set out in the public domain at a court level and reviewed at Local Family Justice Boards. Judicial case management was deemed to be central to the timeframe being met. The PLO was revised. It encouraged concluding proceedings at the IRH where there was no dispute between the parties. The other two elements were for experts to be appointed only where necessary, and for the court's scrutiny of the local authority care plan to be restricted to the long-term plan for the upbringing of the child concerned, that is whether s/he should live with parents, family, adoptive parents or other long-term care[16]. Judges were thus firmly steered towards a prioritisation of some aspects of their role over others: swifter adjudication, tighter management, fewer inquiries (Dickens et al, 2014).

Implementation of review proposals

By the time the Children and Families Act came into force in April 2014 the average duration of care proceedings was 26 weeks in many areas. Practice beat legislation to the punch. Judged by its own terms (which, as we have seen, were limited in public law practice to a single issue) the FJR was in the short-term undoubtedly a success. Masson (2015; see also Masson et al, 2017) identifies three core reasons.

[16] Henceforth I say little about extended judicial oversight of the care plan. It was not an issue in MetroCourt where the only time I heard reference to it was a judge refusing a submission to continue proceedings so as to maintain oversight of the care plan.

First, the professional community was largely in favour of review proposals. There were dissenting voices, mostly lawyers (Masson, 2017) and organisations such as the Family Rights Group concerned that parents' opportunities to prove they could change would be limited. Kaganas (2014) argued that reducing the number of experts in court would mean that judges could rely on nobody to guide them through the maze of research evidence: they would have to do it for themselves and 'in effect, (they) will be the new 'experts'' (Kaganas, 2014: p.13). Having less recourse to independent social workers (worried some judges, others were unconcerned (Brophy et al, 2013). Social workers in local authorities and in Cafcass, where they operated as children's guardians, were broadly in favour. Both groups saw their status as being elevated, a point that was pressed by the Association of Directors of Children's Services and the Cafcass Executive. There was, as I recall, a broad consensus in Cafcass and beyond that many proceedings had drifted. There was a bottom-up willingness to give the reforms a go.

Secondly, the way in which the reforms were implemented was strikingly different from previous failed efforts to enact iterations of the PLO (see Masson, 2015 for a detailed description). Judges were mandated to attend a residential course at which the President was present '(making) clear there was no alternative to managing cases in line with the new system: judicial performance would be monitored and failure by the courts was likely to result in the removal of care work to a tribunal' (Masson, 2015: p.16). We might wonder whether judges felt that they were not only conducting a trial but being on one themselves. Improved judicial continuity helped to produce a culture of urgency within the judiciary. The revised PLO was tested out nationally. The government funded training for local authorities. Designated Family Judges (DFJs) spread the word locally. The combination of legal force, formal training and carrots and sticks worked where a passive dissemination had not.

Thirdly, implementation was piloted, and given impetus, by the tri-borough care proceedings project, a collaborative venture involving three bordering local authorities in London[17], the local judiciary and Cafcass. It was evaluated (Dickens

[17] Kensington & Chelsea, Hammersmith & Fulham, Westminster.

et al, 2014; Beckett et al, 2014). A key feature of the project, that was subsequently adopted by many other authorities, was the appointment of a case manager to support social workers in the authorities, quality assure applications and liaise with the courts. Others were: providers agreeing to undertake swifter assessments; the provision of a small group of children's guardians; a high level of judicial continuity; and a judicial commitment to impose robust case management.

The evaluation drew positive conclusions. The median length of proceedings dropped to 27 weeks in the year the pilot was in train compared to 49 weeks in the preceding year. It found a small number of complex cases which lasted on average 40 weeks. Cases ending with a care order concluded quicker than those with other disposals, the quickest cases being those that concerned new-borns made subject of placement orders. Fewer children had a change of placement during proceedings. The orders made by the court were broadly in line with those made previously. The reform of proceedings did not cause delay in the pre-proceedings work. There were no identified adverse consequences. Justice was not deemed by involved professionals to have been compromised.

A cautionary note was sounded, however, which nodded to the Complexity tenet that context matters. Firm conclusions should not be drawn from pilots, they 'may have benefitted from special treatment and the findings need to be tested more widely and over time' (Dickens et al, 2014: p.109). The local context was favourable as the three participating boroughs were well-resourced and well-managed. There was no data about child outcomes post-proceedings. The impressive degree of energy and commitment seen in one part of the country at one time might not be replicated elsewhere. Time limits might bring unforeseen consequences including the premature conclusion of cases and more subsequent breakdowns.

The project was subject to a two-year follow-up study (Beckett et al, 2016). The added value this evaluation provided was outcome data two years on of children in the pilot and those in the comparator group that had been in proceedings the year before the pilot began. As in the initial study, there were positive findings. More children were in their permanent placement by the end of proceedings. For

those children who had to move to a permanent placement the average time required to achieve this dropped. More children were placed with a family member. Fewer placements appeared to be problematic. The study concluded (Beckett et al, 2016: p.40) that the two evaluations 'show that is possible to reconcile the demands of speeding up decision-making, maintaining thoroughness, and improving outcomes for children. They turn out not to be incompatible, but interwoven.'

However, once again caveats were made. Concerns were raised by professionals interviewed for the study that the timeframe was too rigid for some cases and that the child's welfare might be compromised. Examples were raised of an order being made before the suitability of the placement had been established, and of orders being made with the expectation of a return to court to seek a revocation or amendment. Assessments were cut short, Special Guardianship Orders (SGOs) made without support plans being in place. There were anxieties of problems emerging down the line. The boldness of the evaluation conclusion, cited in the previous paragraph, feels at odds with some of the detail. Professional practice seems to have been skewed by performance management in ways that are reminiscent of Lipsky (1980) and workarounds found that bring to mind the various ethnographic studies discussed in the previous chapter. There is an impression of compliance without much faith.

I turn now to the aftermath of the FJR, starting with some trends in applications and orders that shaped family justice from the Children and Families Act (2014) coming into force up to March 2020.

Trends in applications and orders

Shorter proceedings, but rising demand

Cafcass data[18] shows that the average duration of care proceedings across all courts for the year 2014-15 was 30 weeks compared to 57 weeks in 2011/12, the year the FJR concluded: a dramatic drop of almost 50% in two and a half years. Masson et al (2018) found judicial continuity, fewer experts, fewer hearings, and

[18] The quantitative data in this paragraph has been taken from Cafcass: https://www.cafcass.gov.uk/about-cafcass/research-and-data/public-law-data/ (Accessed 18 July 2020).

more cases concluding at the Issues Resolution Hearing to be associated with shorter cases. The average duration of care cases fell a little lower in the next two years to 28 weeks and then rose again to 31 weeks in 2018/19. As of quarter three of 2019/20[19] the national average was 34 weeks. The trend from 2016/17 to the start of the pandemic was a small year-on-year increase but with substantial regional variations. As of quarter two of 2019/20 the average length of proceedings in the 42 DFJ areas ranged from 20 to 46 weeks.

As the mean length of proceedings dropped, so the number of public law applications continued to rise. In the fourth quarter of 2011, the point at which the final FJR report was published, there were just over 2,500 applications in England, up from 1,500 in the same quarter in 2007 (Cafcass data: quoted in the Care Crisis Review, 2018). In the second quarter of 2016 demand would peak at about 3,800, a rise of a good 50% in under five years. Over a ten-year period from 2007 to 2017 the number of applications in England more than doubled, as they did in Wales. The demand then dropped by 2.7% in 2017-18 and a further 4.6% in 2018-19[20] but in the context of historical demand it was still high.

Such was the strain derived from the massive rise in demand that the narrative within family justice came to be dominated by it. The then President of the Family Division (President) spoke of a clear and imminent crisis (Munby, 2016: p.4). This was, I expect, intended for the ears of politicians as well as fellow professionals but my recollection is that the description chimed with the experiences of many in the field: there was a communal anxiety that the system might be overwhelmed. Two large multi-agency groups were formed to address the problem, the Care Crisis Review (CCR) (2018) and the Public Law Working Group (PLWG) (2019), the former convened by the Family Rights Group as a 'coalition of the willing' and the latter commissioned by the President.

The rise in s31 applications is partially attributable to increased demand upon local authorities. There was, in the first half of the 2010s, a rise in a host of child-related measures – referrals, in need, protection enquiries, protection conferences and plans (Department for Education, 2015a). Other factors were

[19] The last full quarter before Covid-19 struck.
[20] https://www.cafcass.gov.uk/about-cafcass/research-and-data/public-law-data/ (Accessed 4 February 2020).

reduced funding (MacLean et al, 2015) and a culture of risk-aversion following the death of Peter Connelly (Hedley, 2014). These do not create the optimal context for undertaking the taxing work of supporting families with chronic problems. The formalised pre-proceedings process exerted a limited impact on diverting families from proceedings. Masson et al (2013) found a diversion rate of about one-quarter, revised to about one-fifth by a later study (Masson et al, 2020a) which tracked the cases over a longer period. Broadhurst et al (2013) reported a diversion rate of just under 40%. Pre-proceedings work was of a variable quality (PLWG, 2019; Holt & Kelly, 2018), with 'multi-disciplinary and thorough, intensive, relationship-based support' at one end of the spectrum and 'a tick-box exercise undertaken late in the day and viewed as a procedural necessity before proceedings can be issued' (PLWG, 2019: p. 41) at the other. Parents were unwilling to nominate alternative carers, and potential carers were reluctant to nominate themselves, lest this made removal more likely (Ipsos Mori, 2014). The PLWG (2019) further suggested that ineffective pre-proceedings work, together with immense pressure on local authorities, lay behind the increase in short-order applications, presenting case management challenges for courts. As will become apparent in later chapters, these issues continue to play out in MetroCourt today.

The Care Crisis Review (CCR) (2018) noted regional and local variations in rates of care order applications, including differences between authorities that had similar economic and demographic profiles. It concluded that the reasons for this were unclear but probably related to various factors – socio-economic, legal, professional practice, the nature of children and families drawn into care proceedings, and tensions in the system derived from professional mistrust and a culture of blame, shame and fear - that intersected at a local level to push the number of care applications up or down.

The chief social worker for England voiced her concerns at the high level of care applications (Trowler, 2018). Taking her cue from an exploratory study of four authorities she argued that the problems faced by families – violence, substance abuse and so on in the context of poverty and deprivation – had not changed over the past few years, and that child protection should distinguish better between those cases that must enter proceedings and those that could be supported

without recourse to the family court. When I first encountered this argument I did not pay it much heed: by the conclusion of my fieldwork it had become, in my estimation, *the* big issue in public law policymaking. It will resurface in later chapters and influence, in Chapter 9, my analysis of the future of the family court.

The age of children subject to applications

The Born into Care studies made use of population-based data to produce a quantitative analysis of the age of children subject to s31 applications in England (Broadhurst et al, 2018) and Wales (Alrouh et al, 2019). The studies were particularly interested in infants (children under one at application) and, within the infant population, new-borns (under one week in England, under two weeks in Wales). The key findings in respect of both countries were that s31 applications in respect of infants had risen, and that new-borns now accounted for a higher percentage of infants in care proceedings than had been the case some years previously. Further, the studies showed striking regional differences in incidence rates between and within regions.

The studies are germane to the issue of demand. More new-borns are subjects of care proceedings in both countries than was the case a decade or so ago, placing strain on family justice. They also give rise to tricky legal and moral questions. For instance, just over one-half of new-borns were the first child born to the mother. In these cases establishing the threshold test relies exclusively on *likely* significant harm. Pre-birth assessments are commonly conducted close to the due date, limiting the opportunities to develop relationships and test capacity to care for a child, and in the absence of a clear national framework (Lushey et al, 2018). Infants are the group of children most likely to be forcibly adopted and many children in both studies were made subjects of care orders. Could some of these draconian interventions in family life be prevented through the provision of earlier co-ordinated inputs? The studies also raise some particularly challenging ethical issues about how and when the children are removed from parental care: should this be done immediately after birth or should the mother breast-feed the baby? Likewise, new-borns are more likely than elder children to be subject to emergency interim care order applications: how is a mother to instruct a solicitor under such circumstances?

Parents subject to repeat proceedings

A large-scale study into vulnerable mothers and recurrent proceedings (Broadhurst et al, 2017) found that about one in four mothers who was a respondent in care proceedings reappeared in proceedings regarding another child within seven years, representing a significant pressure upon courts. Many of the mothers had deep-set problems rooted in childhood adversity and nearly two-thirds of them had first given birth under 20 years of age. The implications are that early and sustained help is indicated but there is a mismatch between the speed with which some mothers become pregnant again (and find themselves back in proceedings) and the time required to try to effect positive change between pregnancies. In the worst-case scenarios a 'vicious circle' is established of care proceedings, profound maternal loss and trauma, another pregnancy to fill the void left by the lost child, and further proceedings. A revisiting of the data by the research team (Broadhurst & Mason, 2020) shows the cumulative impact of losing a child on mothers: role loss; restrictions on intimate and family relationships; social stigma; limited opportunities to share grief; losing their home. The study makes a powerful moral and economic case for investment in post-proceedings support to mothers.

Recurrent mothers are in a minority as three-quarters of mothers do not return to court. There are numerous reasons why mothers turn their lives around including maturation, professional and informal support, a better intimate relationship, and a determination to do better for the child that is still psychologically present (Broadhurst et al, 2017; Broadhurst & Mason, 2014a). The study has given a boost to programmes such as Pause which provide long-term support to divert mothers from further proceedings. An evaluation of the pilot phase of Pause (McCracken et al, 2017: p.7) found 'a positive and significant impact on the women engaging with the programme' notably fewer pregnancies, more women in secure housing, a reduction in substance abuse and domestic violence. It also suggested savings to local authorities within two to three years. A subsequent multi-site evaluation of Pause (Boddy et al, 2020) also produced positive findings with a significant reduction in the number of infants entering care and improvements in many aspects of the women's lives. However, there is no statutory duty to provide post-removal support.

One element of the Broadhurst et al (2017) study's methodology was to examine a sample of case files which revealed that non-engagement with services was the most commonly cited concern for professionals. A lack of parental co-operation, ranging from not taking advice or instruction through to full-on aggression, features in many s31 applications (in the MetroCourt cases I observed and generically) and may, Bainham (2013) proposes, partially explain why the significant harm threshold is so often conceded by parents in proceedings: having been charged with non-engagement they are firmly steered by lawyers to demonstrating that they will co-operate henceforth by accepting the charge. The prevalence of parental non-engagement needs to be understood as a systemic issue relating to the interaction between the parents and a local authority. Both sides need to act reasonably (Dale et al, 2005; Trowler, 2018). Parental intimidation, mendacity and an unwillingness to consider the local authority's concerns are clearly unreasonable but so is the latter's failure to provide services, to implement plans or to furnish staff with the requisite skills and support. The same might be said of the 'going through the motions' quality of some pre-proceedings work noted above.

The impact of the vulnerable mothers research prompted the setting up of a similar study into fathers. This was undertaken against the backdrop of long-standing difficulties in professionals engaging fathers or gaining a nuanced view of their contributions for good or ill to family life (for example Philip et al, 2018). The final report of the research into fathers' repeat appearances in care proceedings (Philip et al, 2021) found that a good three-quarters returned to court with the same partner and that many had experienced multiple childhood adversities, trauma, repeated losses and social and economic disadvantages. Some of the very common stereotypes of fathers in s31s – flighty, lacking commitment, hidden - are thus disputed. And a fresh challenge is issued to policymakers: how to support couples who have lost a child?

Children subject to repeat proceedings

I turn now to the matter of children who return to court following the breakdown of their court-approved placement. Placement stability is a proxy measure for children's well-being (Masson et al, 2018) as it is widely seen as being correlated

with a good outcome for children who have been through proceedings. Masson et al (2018) found that placements with parents were the most fragile, as 31% of children subject to a supervision order to support reunification were subject to further care proceedings over six years, and a further 22% over two years in a second sample. Harwin et al (2019) found a similar rate of returns to court of 28% over four years. Lutman & Farmer (2013) found a high breakdown rate for children who had been neglected prior to proceedings and then returned home – about a half in two years rising to nearly two-thirds after five years. These studies suggest that the positive changes that occur during the proceedings are hard for some parents to sustain in the long-term. Many of them have chronic and multiple needs and new or previously hidden problems may surface, such as emotional/behavioural problems in children who have sustained significant harm.

Disruption rates are much lower for children placed with special guardians. Harwin et al (2019) found a return to court rate of 4% over three years though it is estimated that the rate of children who had had a change of permanent placement was higher. Wade et al (2014) and Masson et al (2018) found similarly low rates of return to court, notwithstanding the considerable challenges faced by many special guardians, including those of managing contact of the child with his/her parents (Department for Education, 2015b). Little is known about breakdown rates of adoption as most adopted children have a change of surname upon adoption, but it is estimated to be low (Wijedasa & Selwyn, 2017).

The changing patterns of orders

Harwin et al (2019) reported that between 2010/11 and 2016/17 there were notable changes to final orders made by the courts with fewer placement orders, more SGOs and more Supervision Orders attached to SGOs. They also reported that most professionals participating in their focus groups identified the reduced timeframe introduced by the Children and Families Act (2014) as the main reason for some of these trends (Harwin et al, 2019: p. 49). Research conducted in Wales (Alrouh et al, 2019) found a substantial increase in the percentage of cases involving new-borns concluding with a Care Order – from 29% to 64% between 2012 and 2018. It too wondered whether the 26-weeks rule had prompted this change in final orders.

The reforms to public law proceedings, set in train by the FJR and the ensuing legislation, were not designed to influence the orders made by the court and one cannot attribute all the changes noted by the above studies to them. The drop in Placement Orders, and concomitant rise in SGOs has been ascribed to case law, such as Re B-S ([2013] EWCA Civ 1146) (Masson 2017). However, similar concerns to those raised by the research of Harwin et al (2019) and Alrouh et al (2019) were articulated by multi-disciplinary professional groups, the nub of which was that the reforms had brought unintended adverse consequences. Specifically, the PLWG (2019: p.100) expressed concern that care orders were being used to conclude cases 'artificially' and issued interim guidance on the making of SGOs in response to issues raised by Re P-S ([2018] EWCA Civ 1407) in which the Court of Appeal overturned the making of a 'short-term' care order[21]. Likewise, the CCR (2018: p.33) reflected positively upon shorter proceedings but was critical of the 'overly rigid approach' to the application of the timeframe. Concerns included the making of some final orders before it had been properly established that this was the optimal viable option, and before the local authority had completed its care plan. It set out three circumstances in which it believed judgments had been rushed to the potential detriment of the child: the assessment of family carers; parents demonstrating they could provide safe care; and the testing out of the sustainability of a reunification with parents or placement with family. It posited that hasty decisions might bring more breakdowns in placements, leading to subsequent applications in respect of the same child and thus creating further stresses on the system.

The CCR (2018) also argued that the 26-weeks performance indicator did not distinguish between extensions designed, for example, to test out the placement of the child with a father with whom s/he had no previous relationship and those caused by a party failing to turn up at court or a hearing having to be cancelled owing to administrative errors. Child welfare issues risked being conflated with inefficiencies, with both falling under the pejorative term of delay. The PLWG (2019) articulated similar views citing a rigid adherence in some courts to 26 weeks, the contrived ending of cases pushing up the number of children going home on care orders and pressure on judges to put meeting the target ahead of

[21] No such order exists in the statute.

the child's needs. The qualified welcome given to FJR reforms in most quarters gave way, in the light of experience and the dynamic nature of family justice, to a broad unease that they were now inhibiting justice and militating against children's welfare. As I show later, the professional interviews I conducted for my empirical study suggested that negative views of modernisation have hardened.

The Family Justice Board (and the Nuffield Family Justice Observatory)

The issue of how evidence should influence family justice is challenging (Robertson & Broadhurst, 2019). Broadhurst & Williams (2019) posit that there are two ways it happens. The first entails generating evidence about populations involved in family justice (children, families, professionals), the operation of the court and outcomes. The second, and messier, way is concerned with how that evidence should be applied to an *individual* case. This raises questions of the admissibility, quality and relevance of the evidence to the matter before the court, as well as who should provide it (is it appropriate, for example, for a social worker who may not be particularly research-literate to do this, or should it be an expert in the field?). There are also issues of how to stop research being misused or misinterpreted, especially within an adversarial system.

The FJB's terms of reference set out that it will promote 'the best possible outcomes for children and families…through the effective use of data and research…and the creation of a system that shares learning across England and Wales' (Government UK, 2022). It has not done this. Doughty (2014: p130) suggested that scanning the FJB's outputs 'gives the impression that the comprehensive vision of the FJR has been reduced to a cost-cutting exercise'. The CCR (2018: pp.63-64) was equally scathing of the FJB's failure to meet its stated role, the final sentence of this quotation being particularly damning:

> *'*Concern was expressed by sector leaders, the judiciary and legal practitioners that the role and activity of the Board had become much diminished. This was viewed as especially concerning, given the context of the current care crisis, all the more so having regard to the Board's intended function as a driver of increased understanding of family justice, and as a body that would make effective use of data and research, foster

> a climate of shared learning and act as a vehicle for bringing together the resources and knowledge of organisations and agencies… The Board has not met for over a year although it is scheduled to meet this June (2018)'

The CCR was also critical of Local Family Justice Boards, with some meeting rarely and others too focussed on the 26-weeks performance measure. It suggested that LFJBs might be more effective if they, for instance, shared data and analysis and fostered better working relationships.

The Nuffield Family Justice Observatory (NFJO) was established with the aim of improving the use of data and research evidence in family justice: almost verbatim one of the unmet roles of the FJB. It is in a pilot phase from 2019 to 2023 with a current emphasis on linking data. It has funded several of the studies cited above. Should we lament the FJB's shortcomings in light of the NFJO picking up the dropped baton? On this point I have mixed feelings. On the one hand I am inclined to the view that the NFJO has considerably more experience, expertise and credibility amongst peers than political elites, notably those driven by the need to keep costs down. The idea that government should take on the role of promoting evidence (rather than, say, considering its implications for policy) came straight out of the rational model handbook and I doubt it would have succeeded in the long-term notwithstanding the massive disruption brought on by Brexit, one election after another, ministerial musical chairs and then Covid-19. The Multiple Streams Framework (MSF) (Herweg et al, 2017) and Punctuated Equilibrium Theory (PET) (Baumgartner et al, 2017), discussed in the previous chapter, would predict the likely vaporisation of political attention once the FJR was complete, particularly as family justice is a policy area around which politicians do not need to jockey for votes. However, neither the NFJO nor the PLWG can provide the *direct* link between professional communities, the evidence they generate and government that the FJB was meant to supply. That chain is broken. It may be considered then whether the 26-weeks rule remains enshrined in law, not because its continuing value is supported by evidence, but because political interest has waned and there is no clear mechanism to review it.

Adversarial justice: some developments

The family court is formally adversarial, as evidenced by: the court being managed, and decisions made, by a judge; lawyers making submissions, and negotiating with other lawyers, on behalf of their clients; children's views being set out by others; the right to test evidence through cross-examination; arcane legal rules; the establishing of legal 'truths' (see, for example, King & Trowell 1992; Welbourne, 2016). An adversarial approach to child welfare is not confined to the courts: arguably it permeates the entire welfare system. The pendulum between supporting families and protecting children swings back and forth in response to budgets, high-profile child homicides and shifting perspectives as to what child welfare is 'about' (see, for example Parton, 1998). For twenty years and more it has been primarily 'about' the assessment and mitigation of risk[22] and is therefore characterised by: a focus on preventing harm by parents rather than improving family functioning; monitoring and surveillance rather than the provision of substantial preventative services; coercive removals of children from family care rather than voluntary family arrangements (see Gilbert et al, 2011; Kriz & Skivenes, 2015; and Berrick et al, 2015 for a fuller discussion). This causes disquiet that struggling families are being punished rather than helped, as articulated by Featherstone et al (2014: p.2) who assert that 'the social justice aspect of social work is being lost in a child protection project that is characterised by a muscular authoritarianism towards multiply-deprived families'.

Other jurisdictions such as France and Scotland have more inquisitorial approaches to family justice. In the former a meeting with a judge is readily accessible: the judge will seek to mediate a solution and may stay involved over an extended period with lawyers rarely present (Cooper, 2002). Lawyers do not feature in Scotland where a panel is chaired by lay people (Children's Hearings Scotland, 2020). Whether maltreated children fare better in other countries than they do in ours is unknown and, in any case, it would be naïve to propose that, say, the French approach to family justice should be transplanted here forthwith, approaches to child protection being rooted in a country's history and culture (Hetherington, 1997; Cairney, 2016; Welbourne, 2016). Nonetheless, extending

[22] There was a short-lived policy push to re-set the balance in favour of family support following the publication of research compiled by the Dartington Social Research Unit (1995).

our gaze to other jurisdictions enables us to avoid assuming that family justice must be conducted as it currently is in England and Wales.

With that in mind, it is helpful to consider two developments. One is a view, as expressed by a former President (Munby, 2014) that we have moved closer to a hybrid model as features associated with inquisitorial systems, such as the judge ordering work to be undertaken of their own volition or reaching a solution that has not been advocated by any of the parties, have become more prevalent (Welbourne, 2016; Brophy, 2006). Moreover, some elements of an adversarial approach are less in evidence than they were. There are few contested final hearings, the court's focus being primarily on where the child is to be placed, the significant harm test having been conceded or settled by the advocates (Brophy, 2006; Bainham, 2013). Pearce et al (2013) found that lawyers for parents chose their battles carefully, seeking agreed solutions over imposed ones. Conversely, Broadhurst et al (2013: p.9) set out local authority concerns in Coventry and Warwickshire that proceedings were 'overly adversarial' with 'combative' lawyers for parents undermining the timetable for the child. Much of Chapter 6 is given over to discussing the balance between adversarial and consensual modes of conducting family justice in MetroCourt, together with the forces that push cases in one direction or the other.

The second development is the Family Drug and Alcohol Court (FDAC) which provides therapeutic rather than adversarial justice (Harwin et al, 2014; Harwin et al, 2016). It is distinguishable from the standard family courts in various respects: judicial continuity; fortnightly meetings of the judge with the parents with no lawyers present; and intensive input from a multi-disciplinary team that seeks to boost parental resilience and problem-solving capacity. The parents who are respondents in these courts have substance abuse problems; many have other psycho-social problems.

The evaluation, conducted by Harwin et al (2016), of FDAC cases and non-FDAC cases shows that a higher proportion of the former stopped abusing and were reunited with their children. It further found that over a five-year follow-up period 58% of mothers whose children were returned to their care (or stayed with them) remained substance-free compared to 24% of their non-FDAC counterparts. The

evaluation asserted that as the samples were similar in other respects (services, local authorities) the positive findings could be attributed to FDAC. The 'cherry on the cake' was a report from the Centre for Justice Innovation (2016), finding that there were likely savings for courts and services. Notwithstanding this, the FDAC National Unit closed in late 2018 because of a lack of funding, with private funding enabling the forming of a new national partnership to support and extend FDAC (Michael Sieff Foundation, 2019).

Modernisation through the lens of Complexity

This chapter has provided an overview of the modernisation of family justice and analysed it with reference to the literature, extensive experience in the field and Complexity, setting the scene for the MetroCourt study that follows. It concludes with reflections on what Complexity can contribute to an understanding of modernisation.

Complexity – a recap

Complexity has been applied to many areas of public sector policymaking. It has made some inroads into the mainstream challenging the dominant rational model of public policymaking and raising doubts as to whether repeated policy failures can be reliably attributed to the competence of those charged with turning policy into practice. Complexity takes issue with standard policy formulations (a surfeit of rules, regulations and indicators) and contends that the principal roots of failure lie in the way policy is made. Thus, we are steered away from a narrow consideration of *what* the policy is to a broader one that also incorporates *how* it is devised and turned into practice.

In the sphere of public policy Complexity is at its most compelling when demonstrating the flaws in the rational model in tackling the intractable problems thrown up by complex systems with their inherent unpredictability, uncontrollability and reliance on human agency. It shows that policy emerges from the confluence of professional interactions and policymakers' directions. It explains how a government's attention falters and why policies continue long after their effectiveness has been eroded by time and events. It makes us wonder whether performance management – the go-to mechanism for policymakers to enforce and extend the longevity of their policies – is unproductive or, worse,

counter-productive when meeting the target supplants meeting users' needs as practitioners' number one priority.

Prescribing a coherent model is axiomatically harder than critiquing the dominant one. Solutions cannot be just copied and pasted in. And it might be unbecoming for a theory that advocates humility to start looking like a bit of a know-all. Complexity has, however, defined some common principles such as: establishing 'buy-in' to values; encouraging local initiatives; distributed leadership; devising flexible plans that can be adapted to changing circumstances; engaging actors in the making of policy; and using rules and targets sparingly. The challenge for advocates of Complexity may be to be create a more unified and user-friendly model without losing the vibrancy that is derived from myriad theories, proponents and applications.

Reflections on modernisation

What then can Complexity offer to an understanding of modernisation.?

First, the influence of rational thinking upon the modernisation of public law proceedings becomes apparent. Holding a review and making an indefinite plan are go-to tools of rationalism as they fit perfectly with the idea that policy should be made downstream and with the constantly-shifting demands made on political administrations that cause a public policy matter to rise up the list of priorities – and then drop down again. The FJR terms of reference were narrow in respect of public law and reductively directed the panel firmly to one aspect of a highly complex system – the time taken to conclude cases – thereby over-simplifying the causes of lengthy proceedings and the consequences of these for children's welfare. Rationalism is also identifiable in the solutions posed by the FJR - the stipulation of a one-size-fits-all (or virtually all) timeframe, the reliance on a performance indicator to boost compliance and the reduction of judicial discretion.

Secondly, it provides a cogent explanation of why modernisation gained some immediate approval but then faltered. Conceiving of public bodies such as family justice as a complex adaptive system is central to this explanation. The behaviour of a such a system emerges primarily from the communications between actors, and thus is constantly in a state of flux. It does not therefore bend indefinitely to

the will of the policymaker. Modernising the family justice system for public law cases was successfully 'sold' on a win/win premise: justice could be dispensed in a mandated timeframe and children's outcomes would thereby improve. This struck a chord amongst many actors who shared concerns about unduly long proceedings. Professional compliance was also facilitated by the attention paid to implementation. It was piloted and positively evaluated, albeit with caveats, and there was a gap between the FJR and legislation that allowed for training, preparation and a touch of arm-twisting. Policy will not hold indefinitely, however, particularly if professional values are affronted. In family justice's case the influence of formal policy has waned as apprehension has grown that it has put pressure on courts to make difficult and life-changing decisions in the absence of appropriate evidence, had an unintended bearing on orders being made and failed to promote the welfare of some children. Case durations have subsequently risen steadily even before Covid-19 caused further disruption and delay. This trend implies a reframing of delay in daily practice from invariably bad to a more sophisticated view that it should be weighed against other welfare considerations.

Thirdly, it suggests that increasing regulation is liable to produce unintended consequences. Performance indicators are crude mechanisms, unsuited to the wicked problems produced by child maltreatment (Devaney & Spratt, 2009). Examined through the prism of Complexity there are two strong arguments against the 26-weeks indicator. One is the issue of reliability: does it tell us what it purports to tells us, in this case that children's outcomes are improved by adherence to it? The tri-borough pilot evaluations gave rise to some optimism that this was the case but the groundswell of professional opinion, articulated by the CCR and PLWG, no longer supports that view. The other is the concern that an indicator distorts practice, leading to cases concluding before the optimal placement has been established, thus meeting the standard but failing to deliver permanence for the child.

Fourthly, the response of the professional community to the faltering of the FJB can be understood in Complexity terms as a positive example of system adaptation. The government's apparent disengagement has not led to system inertia nor chaos notwithstanding the substantial challenges of reform, rising demand and, more recently, the pandemic. There is a vibrant research

community, exciting initiatives to link data and a commitment to boosting the role of evidence in family justice. There are also forums such as the CCR and PLWG where professionals have met to share experiences, problems and solutions. Working in such forums is commonly hard. Tensions, vested interests and competitiveness lurk just under the surface. Discussions tend to be repetitive. Having to attend yet another meeting where the same faces will be present, and the same topics rehearsed, does not universally induce unconfined joy. But it is essential that actors share experiences and are in a state of readiness to influence formal government policy when the right moment arrives.

Chapter 4: Methodology

Introduction

This chapter describes the ethnographic study undertaken in MetroCourt between February 2021 and March 2022. This was a period when the Covid-19 pandemic disrupted family justice by obliging it to be conducted remotely, via telephone or video, at practically no notice. The core element of my study was observation, by video conference facilities, of 33 hearings across 11 public law cases (mostly care proceedings). In line with many ethnographic studies I made use of other empirical materials: 12 formal interviews with a range of professionals who have extensive experience of public law work and informal discussions with two judges.

There have been very few contemporary studies of family justice based on direct observations of the family court in the UK. I found four: Pearce et al (2011), Darbyshire (2011), Eekelaar & Maclean (2013) and Tunnard et al (2016). The first three of these pre-dated the Children and Families Act (2014) and the last one was an evaluation of the problem-solving Family Drug & Alcohol Court (FDAC). The absence of such research is not surprising given the complex ethical and legal obstacles. However, in the context of staunch criticisms of the Family Court's lack of transparency (Tickle, 2020), and the failure of modernisation (see previous chapter) to investigate the complexities of family justice practice, it is precisely this kind of research which is needed. In addition, close engagement with the field of practice provides detailed observations which are recognisable to the field, but also hold out the promise of novel reflection and insight. As I write, we are beginning to learn more about the operation of the family court during the pandemic through practitioner consultations (Ryan et al, 2020a, 2020b) and professional anecdote (blogs etc), but to-date, this study is, I believe, the only example of research comprising direct observation.

The chapter starts with an account of how the study came into being. The study was carefully designed, with extensive reference to the generic (qualitative research) and specific (ethnography) literature, to negotiate a way through the maze of approvals required to start collecting data. Thus, after setting out why I chose to do a qualitative study, I then discuss the literature germane to qualitative

research, ethnography and interviewing, including the various ethical and practical dilemmas that must be tackled. The convoluted business of gaining access to the court is described, and in addition there is discussion of how the data was analysed and limitations of the study. The chapter concludes with some reflections on the methodology.

Genesis of the study

The first lockdown started on 23 March 2020, just as thoughts turned to the empirical study, what it would be about and how it would be done. I had met with the Designated Family Judge (DFJ) in MetroCourt a month before and, at his/her invitation, sat in on three public law hearings. Afterwards, in discussion we discovered a shared interest in ethnography and curiosity about whether it could be made to work in a family court. I voiced some rudimentary ideas about what such a study might address derived from early drafts of Chapters Two and Three and there we left it with an agreement to talk further. I went into the meeting with a mild optimism that an ethnographic study might take place in MetroCourt and left it with an outline plan and provisional DFJ endorsement. Studies are fashioned by chance as well as choice (Van Maanen, 2011b): such was the case with mine.

Shortly after Covid-19 transformed the unthinkable into the norm, affecting every aspect of our lives. A perfunctory online trawl confirmed that family justice was subject to major interruption as it was recast, at very short order, from a fundamentally face-to-face to a fundamentally online activity, increasing the stress of overworked professionals operating within an already-overburdened system. In discussion with supervisors, and then alone, the idea formed that Covid-19 should influence the focus of the study. This was in some measure a nod to the inevitable, an acceptance that the pandemic could not be ignored. However, it was also an anticipation that family justice's response to the shock of Covid-19 might produce some valuable learning. Would remote working assist or impede the court in conducting its business? Would extant tensions be resolved or amplified? Thus, what initially presented as a major hurdle became an opportunity to explore in-depth how a family court would respond to a major shock through the lens of Complexity.

Why do a qualitative study?

The methods we choose are influenced by our personalities, preferences, tastes and experience (Van Maanen, 2011a; Gonzalez, 2000). Good qualitative research requires, as does child protection work, 'people skills' such as empathy, intuition and communication. My prior experience of conducting child protection research at the National Society for the Prevention of Cruelty to Children (NSPCC) and Cafcass leaned heavily towards the qualitative with data taken mostly from individual and group interviews and from case files. This included the two books, cited in the introduction, that I co-authored while in a management role at the NSPCC. Working in the consultancy arm of the NSPCC involved my contributing to a range of qualitative research studies including: families where a parent had mental health problems; children who had given evidence in criminal justice trials regarding sexual abuse allegations; a UNICEF-commissioned study into sexual abuse perpetrated by aid workers; evaluations of local authority child welfare services. At Cafcass the policy team produced around four small-scale studies each year, on such matters as repeat applications in private law, and the work of the children's guardian.

How, and why, a decision to conduct a qualitative study became an application to undertake a mixed-methods ethnographic study in a family court is set out below. First, we need to pause and see what the literature tells us generically about qualitative research and then specifically ethnography, including the matters which the aspiring researcher needs to consider.

Qualitative research

Qualitative research entails several methods of inquiry that may be used on their own or in combination. Making use of two or more methods is an established way of triangulating data to mitigate the researcher's subjectivity, make the study more robust and to provide fall-back plans if one element of the methodology fails. Qualitative research does not systematically transform data into numbers. Although we may encounter numbers in qualitative research, we will not (or *should* not) stumble across claims of statistical significance or representations across whole populations. Qualitative research does not ask 'how many?' or 'how frequently?', but rather 'what is going on here?'. It encourages immersion in a

field (Tracy, 2020) albeit an immersion that may be restricted by resources, timeframes and access. Becoming steeped in a culture enables 'thick description' (Geertz, 1973 – widely cited, for example Charmaz, 2006: p.14), a profound and nuanced account that facilitates the generation of plausible analyses and theories. The strengths of qualitative research thus lie in its capacity to provide insights, explanations and theories of social behaviour; to reveal the hidden, the taken-for-granted and the unwritten rules; to give voice to participants' experiences, perspectives, constructions of reality, actions, motives and stories; to explore what people do and how it fits with or deviates from formal accounts; to produce rich data and compelling interpretations (Ritchie & Spencer, 1994; Charmaz, 2006; Tracy, 2020; Papen, 2019).

Time was that qualitative study struggled to assert itself against the objections of its hegemonic sibling quantitative research (Sutton, 1997; Maclean & MacIntosh, 2011), the chief complaint being that one cannot generalise from a relatively small number of cases. The counterargument (Flyvjberg, 2006; Schwant & Gates, 2018; Ragin, 2009) is that *all* knowledge is context-dependent regardless of how it is generated and that the purpose of research should be to promote learning rather than generating definitive proof. The literature further disputes that generalisation is not possible within qualitative studies (Bansal et al, 2018), positing that there are two mechanisms by which knowledge may be transferable from this type of research. One is 'naturalistic generalisation' whereby an account resonates viscerally with readers causing them to apply the findings to their own experiences (Tracy, 2020). The other is 'analytic' or 'theoretical' generalisation, a more cerebral process of taking learning gleaned in one situation and applying it to another (Watson, 2011; Schwant & Gates, 2018).

Questions of rigour are as relevant to qualitative research as they are to quantitative study, albeit taking on a different guise. It is important to counter a tendency towards 'anything goes' and to consider the validity of observation and inference. A crucial element of qualitative inquiry is therefore reflexivity, the process by which the researcher makes use of conscious awareness of self to counter their own subjectivity and potential bias. It recognises that the stories that are told, and the ways they are told, are influenced by the researcher's beliefs, values, personal and professional histories, social positions and the connections

they make to those they study. Researchers, especially ethnographers who are liable to get close to the action, 'effectively become the editors of the culture or society they describe' (Mitchell, 2007: p.62). Reflexivity is essential therefore to interrogate the ethnographer's emotional responses and to generate the intellectual distance required to provide a critical analysis (Hume & Mulcock, 2004; Davies, 2002). It is also, Davies (2002) argues, a moral imperative: if we are peering under the carpet of others' formal accounts to ask what is really going on, we should be willing to question, and reveal, our own reactions. Further, it can enrich a study by providing insights into participants' experiences. An example is the urine-soaked trousers incident told in Chapter One. A similar example is provided by Coggeshall (2004) who, when conducting an ethnographic project within a prison, was obliged to humiliate himself, begging the guards to open a door so he could recover his possessions. Subsequently he realised, prompted by an inmate comment, that this is what prisoners were obliged to do daily.

In accordance with the principle of reflexivity the researcher is steered (Tracy, 2020; Brinkmann, 2013) towards considering their position regarding inductive (or emic) versus deductive (or etic) approaches. Induction is a mode of reasoning that favours working from the bottom up whereas deduction works from the top down. If we adapt the chicken/egg conundrum to the world of qualitative research (which comes first – the data or the theory?) an inductive approach eschews pre-existing theories and hypotheses in favour of letting the meaning emerge from the data. Grounded theory is a well-known inductive approach (Charmaz; 2006; Charmaz & Mitchell, 2011). Such was the commitment of early iterations of grounded theory to induction that the researcher was advised to conduct the literature review after the data-collection. Charmaz's (2006) modern 'softer' version is less dogmatic on this and other matters, content even for the researcher to meld grounded theory with other models. A deductive approach is the inverse. One starts with the theory, constructs hypotheses based on it, tests them out and confirms or refutes the theory accordingly. Tracy (2020) argues that emic and etic approaches are blended in many studies and she and others (for example Brinkmann, 2013) make use of a third method – abduction - that just does that, keeping the mind and senses open to surprising data and developing

tentative hypotheses to test them out (see Tracy, 2020: pp. 27-29 for a fuller explanation).

These descriptions of different approaches were helpful to me when designing the study. I reflected on my research experience and concluded that most of it was closer to the deductive end of the spectrum, as one might expect of studies where the commissioners have specific questions to which they want an answer and prescribe methods they are prepared to fund. I also saw that the books I had co-authored were shaped by experiences and theories developed in practice. I foresaw the MetroCourt study as having elements of deduction: drafting the chapters on Complexity and modernisation had given me ideas as to what I might find and how I might construe it. However, these fell short of being hypotheses and I preferred to see them as sensitising concepts (Bowen, 2006; Charmaz, 2006), things that we are receptive to picking up consciously or unconsciously and that act as starting points for our data collection and analysis. Moreover, whilst I felt no urge to declare myself a grounded theorist (or a member of any other school) I was drawn to some of its tenets. I recognised, for example the buzz associated with letting the data take me into uncharted territory, and how I had instinctively built simultaneous analysis and memo-writing into many prior studies. My starting position was therefore somewhere in the middle, incorporating elements of induction and deduction, leaning marginally towards the former in that I wanted to be open to where the data took me, expecting that the position might fluctuate and feeling comfortable with that.

Ethnography

The term ethnography is derived from the Greek, translatable as writing about people and cultures. Some of the literature (for example, Charmaz & Mitchell, 2011) insists that to be worthy of the name ethnography must capture an entire culture. Van Maanen (2011a, 2011b) questions whether that is a realistic aim. Ethnography's core component is observation[23], watching people going about their everyday lives and gathering data from their social interactions with others who share their milieu. It can be supplemented by interviews conducted one-to-

[23] Sometimes referred to as 'participant observation' where the ethnographer actively takes part in the activity s/he writes about.

one or in groups, surveys and textual analysis. Its origins lie in the late 19th-century/early 20th-century practices of social anthropologists and sociologists, respective pioneers being Malinowski and Boas. The former strand set out to describe the 'exotic' located half-way round the world; the latter's purpose was to recount the untold stories of people closer-to-home in the furtherance of social reform (Lassiter & Campbell, 2010; Wellin & Fine, 2011).

Modern-day ethnography, in recognition of its relentless focus on human interactions, communications, behaviours and motives is inclined to see itself as the point where social science rubs shoulders with the humanities (Van Maanen, 2011a; Charmaz & Mitchell, 2011). The positivist belief that ethnography is a science capable of capturing the single 'true' picture of a culture has faded (Papen, 2019) though it permeated early versions of grounded theory as developed by Glaser, Strauss and Corbin in the late 20th century (Charmaz & Mitchell, 2011). It has largely given way to the interpretive paradigm which sees reality and knowledge as social constructs (Brinkmann & Kvale, 2018; Tracy, 2000; Charmaz, 2006). I find it very difficult to square a positivist view with child protection activity other than in respect of the concrete phenomena: the lists of children subject to protection plans, buildings, computerised systems, organisational charts and such like. Just about everything else is disputable, and frequently disputed: what happened, who did it, why, what it all means, what are the moral, legal and familial implications. I assume therefore that the descriptions and analyses that I present in the following chapters are 'representations not realities' (Van Maanen, 2011a: p.224), that I am telling *a* story, not *the* story. Nevertheless, I would expect the story I tell to resonate closely with practitioners in the field, that being the optimal test of its relevance and integrity. In that regard I was gratified to receive feedback from a MetroCourt judge who read drafts of Chapters 5-8 and commented as follows: 'I really enjoyed reading the chapters. It is completely fascinating stuff – so interesting to see a world I am so embedded in through different eyes and from a very different perspective.'

One of the requisite features of ethnography is seen by many (for example, O'Reilly, 2012; Watson, 2011) as an extended period of fieldwork. Goffman (1989) advocated the investment of at least a year though did not specify whether this needed to be full-time and unbroken. Looking back at the ethnographic child

protection studies discussed in the Chapter 2, I note considerable variations in the degree of fieldwork undertaken: at one end of the spectrum 240 days observation supplemented by 60 interviews and 12 focus groups (Wastell et al, 2010), at the other six observations of a duty team and team meetings together with (an unspecified number of) semi-structured interviews (Saltiel, 2016). A team that has substantial external funding can do significantly more fieldwork than the lone worker. This does not invalidate the small ethnographic study but claims regarding the robustness of its findings should be made and evaluated accordingly (Saltiel, 2016). Where resources allow, the rationale for the lengthy input is that this allows relationships and trust to build, for self-consciousness or impulses to please/thwart the ethnographer to dissipate, and for sense to be made of the 'bewildering web of interconnections' (Lichterman & Reid, 2015: p. 597). Immersion in the field helps the ethnographer to become bodily attuned to participants' non-verbal cues (Goffman, 1989), to get beneath the surface, to enhance verstehen (an empathic understanding of subjects' experience and actions), to form a bridge between macro and micro perspectives, to grasp the (dis)connections between formal accounts of how things work and 'real world' events. Nonetheless, the ethnographer is encouraged to make modest and plausible epistemological claims rather than definitive explanations (Lichterman & Reid, 2015; Lichterman, 2017; Van Maanen, 2011; Gonzalez, 2000). Humility is as prized within ethnography as it is in Complexity.

Perceptions as to the relationship between the researcher and participants (those being observed) have shifted from early ethnography, the boundary between the two becoming more permeable. First, participants may be encouraged to contribute to the research through written notes, contributions to establishing the meaning of the data or even input to formulating the study's design. One of the trajectories is thus towards a more collaborative ethnography with, at one end of the spectrum, the researcher and research subjects having the status of 'epistemic partners' (Lassiter & Campbell, 2010: p. 760). However, the willingness of participants to work collaboratively with ethnographers cannot be assumed: a disinclination to invest their precious time in somebody else's enterprise is not unreasonable, particularly as the benefits of research are more likely to be reaped collectively, or by the researcher, than by them personally

(Murphy & Dingwall, 2011). Secondly, the researcher may already be, or become, a participant by prepping food in a professional kitchen or stepping into a wrestling ring – and then writing about it. Gold (1958, as cited by Uldam & McCurdy, 2013) construes the ethnographer as complete participant at one end, complete observer at the other and points in-between. The position is neither fixed nor necessarily within the ethnographer's gift as social interactions are not readily controlled (Davies, 2002). It is largely determined by context, the degree of access that is granted by organisational gatekeepers and the extent to which the observer is deemed competent and trustworthy by participants. Alternatively, the researcher may seek to make themselves useful and blend into the background, as Papen (2019) did when observing a primary-level class, gaining acceptability as well as feeling that she had given something back. Offers to 'muck in' would, however, be deemed inappropriate in a rule-governed formal setting such as a family court hearing. Thus, of necessity, I observed rather than participated with a couple of exceptions: sharing my thoughts in informal discussions with two judges and later sending draft chapters to those judges for their comments.

There is a further issue which the ethnographer cannot avoid, namely where they stand on the overt-covert continuum. This is concerned with the issue of disclosure of researcher status: whether it is done and, if so, to whom, how and when. An argument in favour of the covert study is that disclosure affects the behaviour of those observed, at least in the short-term (Spicker, 2011; Bryman, 2015 as cited by Whittaker, 2018). Operating covertly was out of the question in my study on ethical grounds: at the very least everybody needed to know who I was and why I was in court. The counterargument to operating covertly, one that has become enshrined in research ethics processes, is that participants should make informed decisions as to whether to contribute to research. That principle is not generally hard to apply to most qualitative methods[24]. Formal interviews, for example, involve rules set out in advance and written and signed agreements. It is less clear-cut with ethnography which tends to entail large and fluid populations (Murphy & Dingwall, 2011), generating awkward moral and practical dilemmas. Does every participant have a veto and, if so, does that mean that the

[24] I ran research governance at Cafcass.

study grinds to a halt every time there is a change in personnel? Do all participants enjoy equal rights, including those with whom contact is fleeting? How should disclosure be made, and permission sought, without disrupting business? Spicker (2011) asserts that inductive ethnographies may present even greater challenges than deductive ones because of their propensity to follow the data rather than a predetermined prescription. They are, according to Sandelowski & Barroso (2003: p.781), 'exercises in imaginative rehearsal' which can put them at odds with ethics committees' wish to clear matters in advance or instructions to re-submit applications if the methodology flexes. The ethnography literature provides accounts of researchers grappling with the dilemmas posed by disclosure but has rather less to say about grapples with ethics committees. McCurdy & Uldam (2014) describe the membership of the principal author in an anti-capitalist movement, where different groups congregated in ambiguous relationships, and how he established the principles governing disclosure as he went along (disclosure to those with whom he had an insider relationship but not otherwise). Telfer (2004) studied groups representing adoptees, adoptive parents and birth parents – groups holding antipathetic positions towards each other. He managed to establish a degree of trust by extending full disclosure to incorporate his personal values and where he stood regarding the different political orientations of the groups. Li's (2008) position, when watching female gamblers, moved from covert to overt to peripheral, none of which she found especially satisfactory. The inference is that there are no hard-and-fast rules, that context and conscience dictate how one ought to proceed.

I finish with a few words about technique. This can be kept brief as there is, according to Van Maanen (2006), not much of it in ethnography. High level analytic and inter-personal skills matter more. A 'keen eye, receptive mind, discerning ear and steady hand bring us close to the studied phenomena and are more important than developing methodological tools' (Charmaz & Mitchell, 2011: p. 161). Creative writing is encouraged to bring people's stories to life, provided this is done truthfully (Watson, 2011). A degree of resilience and perseverance help, as watching others intently is something of a social taboo, especially when accompanied by a lack of social interaction. It might smack too closely of voyeurism for some (Muir, 2004). The researcher is liable to experience anxiety,

particularly in the early stages of the study (Gonzalez, 2000). It is naïve to expect all participants to welcome researchers sticking their noses into others' business. Being snubbed and humiliated often come with the turf (Tracy, 2007, 2014) and a thick skin comes in handy.

Interviewing

Interviews complement and strengthen observation (Watson, 2011). They range from the structured which is best suited to comparative studies that require the same questions to be posed of each participant (Tracy, 2020) through to the unstructured that are found, for example, in those ethnographic studies where the researcher hangs around and opportunistically speaks to participants. Somewhere in the middle sits the semi-structured interview, an organic and flexible exchange that allows, or even encourages, the interviewee to exert some control over the matters under discussion in the expectation that new insights, nuanced descriptions, polyvocal meanings and contrasting perspectives will emerge (Brinkmann, 2013, 2018; Tracy, 2020). The challenge for the interviewer is to strike the balance between, on the one hand, giving interviewees their head and letting the conversation flow and, on the other, not losing sight of the purpose of the exchange. It takes confidence, expertise and knowledge to depart from pre-determined questions or bullet-point lists of topics to be discussed (Tracy, 2020) but this may engage the interviewee better and produce richer data (the two being linked as the bored interviewee is more likely to give stock rather than considered responses). The requisite skills include: conveying respect and genuine interest; intuiting what is not said as well as what is articulated; making use of emotional intelligence; establishing whether ambiguity is a communication problem or is derived from interviewee ambivalence and uncertainty; developing a conversational style that puts the interviewee at ease and encourages openness; asking clear questions. There are judgements to be made about how much and when the interviewer should set out their view: prior experience taught me not to say too much too soon about what I thought lest the interviewee told me what they thought I wanted to hear. Some of the ethnography literature portrays interview-only methodologies as being the poor relation of interviews that are integrated with direct observation (Watson, 2011). Brinkmann (2013) has

a different view, arguing that well-prepared and well-conducted interviews can of themselves illustrate human experience in all its richness.

There are two different approaches to deciding how many interviews to conduct. One is the principle of saturation – the researcher keeps going until s/he feels that nothing new is being learned. The second is to decide on a target number of interviews in advance. The latter protects against the researcher becoming overwhelmed with data. There is, however, no 'right' number. Tracy (2020) and Brinkmann (2013) suggest the rule of thumb is about 12 or 15 respectively though the former is sceptical that that is enough. Quality is more important, this including purposeful sampling – ensuring that interviewees are chosen to provide data that is congruent with the study's aims (Tracy, 2020). That was the principle I observed in identifying prospective interviewees.

Why do an ethnographic study?

Although I spent a good deal of my working life observing others and analysing what I saw I had never conducted observation as a formal research method. If a personal motive for doing a thesis was to get out of the comfort zone then a casual glance at a few texts confirmed that ethnography promised that in spades (Van Maanen, 2011a; Goffman, 1989; Wellin & Fine, 2011). Curious to know more I completed the Faculty of Arts and Sciences online ethnography module and read extensively. It became apparent that there had been very few ethnographies of UK family courts. As stated in this chapter's introduction, I found just four, those being an evaluation of the therapeutic court FDAC (Tunnard et al, 2016), the previously cited study of lawyers' practice (Pearce et al, 2011) and studies by Darbyshire (2011) and Eekelaar & Maclean (2013) of family court judges at work. I found no ethnographic study of the 'standard' family court following the Children and Families Act (2014) coming into force. These studies represented a tiny fraction of family justice research which struck me as odd given ethnography's long tradition of exploring the world of work and its potential to produce rich data. It felt important to give ethnography a try, test whether it could be made to work in the family court. I had noted its capacity to produce verstehen in, for example, the various child protection ethnographies previously cited, and felt confident it could deliver the same in the family court setting.

I was also cognisant of the accusation levelled at family courts of secrecy and the harm this can bring 'to public acceptance of the courts' legitimacy' (Tickle, 2020: p. xv-xvi). The issue of transparency creates tensions between opening the court up to scrutiny and preserving the confidentiality of the child and family. The public is not allowed into the family court. Accredited representatives of the media are (theoretically) permitted to observe hearings. However, a combination of arcane legislation that was not devised with modern family justice in mind, together with the risk that judges will place reporting restrictions at the conclusion of the hearing and the late production of court lists, has proved an intractable barrier to journalists reporting on cases in the family court (see Bellamy, 2020, for a full account of the problems and proposed solutions, and the Transparency Project, 2020a, for a description of further obstacles caused by the pandemic). The consequence of this situation is that the (Benthamite) principle of justice being seen to be done is currently unmet. A small-scale ethnographic study was one modest way in which the court could demonstrate its willingness to be more open.

The clinching factor was the enthusiasm of the DFJ for my doing ethnography in MetroCourt, and their active support in making it happen. The small-scale study conducted by a PhD student is not an easy sell. I knew from experience that many organisations are understandably wary about how their organisations are portrayed in print (Smith, 2011). I needed a powerful sponsor within family justice prepared to use their influence to get the study off the ground, and out of the blue I had one. It would have been an act of monumental folly to have turned down the offer. What did I do to merit the DFJ's favour? I must have conveyed some authenticity and knowledge. Age and experience surely helped, as did the existing strong relationships between the university and court.

Gaining access to the court

Securing access to the court was challenging. The plan to watch public law cases generated issues such as: whose permission should be sought and how; how to avoid perceptions that justice has been contaminated; whether it is proper to have informal discussions with professionals or family members; how to ensure that vulnerable parents give informed consent. No prior ethnographic study of the

family court gave me a clear template to work from. I devised the following three-part typology to help me navigate a way through the uncharted waters:

- Approval denotes the formal permissions required to start data collection, three in this case: the President of the Family Division (President), the University and HM Courts & Tribunals Service (HMCTS).
- Agreement denotes the informal means by which professional stakeholders in the research have the power to make a study happen or to make it difficult for it to proceed.
- Consent refers to the rights of family members to give or withhold permission for 'their' cases to feature in the study.

Making use of this typology I now describe how I gained access to the court.

Approvals: gaining formal permissions

The President's permission is required to conduct research in the courts. This was not a detailed application, and it could be done without reference to other approvals. The DFJ offered to approach the President, making clear s/he backed the study, and approval was swiftly given. The other two applications required much more preparation. They had to be done in a sequence as HMCTS would not accept an application until university approval was obtained[25]. Both processes took longer than advertised. In the University's case the delay was, I infer, a consequence of the significant stress brought by Covid-19. In HMCTS' case it was a nervousness about my application to be copied into the bundle[26] of papers prepared for each hearing. That request was refused but HMCTS gave permission for me to go into the court and look at case files. This was impractical as the courts restricted physical access and as I felt uncomfortable about burdening court staff with yet more work[27]. While I waited for formal permissions the DFJ invited me to observe three hearings to help me become familiar with the technology and court processes.

[25] A copy of Lancaster University ethics approval is provided in Appendix B
[26] Documents provided to the court before a hearing that should contain all the information the court needs for that hearing.
[27] From time to time one judge would email me a few documents of their own volition.

Did my not seeing the bundle have a substantial adverse impact on the study? I'm inclined to think not. Hearings started with an update from the lawyer representing the party making the application. Experience in the field helped me to join up the dots.

Agreements: obtaining professional stakeholder buy-in

There were two groups I had to consider, judges and other professionals that I would encounter in court.

It was essential to have the judges onside which meant anticipating issues that might cause them discomfort and prevent me from being invited into their courts. My understanding is that judicial independence stops a DFJ from pulling rank on more junior judges and instructing them to allow me to observe. I needed to anticipate what might trigger judicial anxiety and reduce my access. I had identified in the formal applications that one common element of ethnography – hanging about and talking opportunistically to whoever is willing to engage – was ruled out[28]. Family courts are symbolically and physically divided by security doors and separate entrances, with the judge one side and families and professionals the other, to guard against justice being compromised by private discussions. My moving between the two would risk creating the perception that I was sharing comments made by the judge with professionals/families or vice-versa. I had opted for the judicial side as primary interest was in the impact of Covid-19 upon the court rather than in the families. I planned, however, to have informal discussions with judges, where they were willing to do so. It became apparent in discussion with the DFJ that some judges were worried that their judgments would be appealed on the grounds that I had influenced the judge or that the judge held a different view than that set out in the formal judgment. We agreed that formal interviews should be offered to the judges towards the end of the study and that they should avoid detailed discussion of individual cases.

[28] Hanging about requires physical attendance in court which was prevented by Covid-19 restrictions: however, when I was planning the study I hoped at some point to be physically present in court rather than, as happened, watch cases remotely throughout.

Notwithstanding this, a couple of senior judges initiated occasional post-hearing discussions with me[29].

Regarding the second group – other professionals – MetroCourt has a large and fluid professional population. There are social workers employed by the ten local authorities that MetroCourt serves, children's guardians employed by Cafcass and dozens of lawyers. I was keen not to go through the formal research governance process of each local authority and Cafcass as that would have the potential to detain indefinitely a project that was already delayed. One could at this juncture have delved into esoteric legal arguments around the authority of the court and around who owns the data, but these didn't commend themselves to me. I am not a lawyer so would have been unqualified to make a robust case. Moreover, I had learned from Complexity that the law is often nebulous and does not guarantee compliance. Not for the first time the DFJ's active influence was essential as s/he secured assurances from established contacts in two of the organisations that they were content for the research to go ahead without recourse to their ethics committees, and then presented that within the formal setting of the LFJB to the other organisations as the template for agreeing how to proceed. I doubt that official accounts of the role of a DFJ include the deft use of authority and working people to benign ends, but both were in evidence here. Several weeks into the project one of the local authorities sent me a risk assessment form to complete. I dutifully did so. 'It looks ok, we'll get back to you soon with a formal response' was the reply. I never heard from them again.

Consents: making ethical and pragmatic decisions regarding families

For the study to progress I needed to adopt a position of ethical pragmatism. It was impossible to seek the informed consent of all participants in hearings. Children very rarely attend hearings (and none did in the cases I observed), their views being set out by children's guardian and lawyer. I took the view that parents require special consideration by virtue of their vulnerability derived typically from multiple social/health problems and exacerbated by the prospect of losing a child. It is their personal histories and perceived failings that that are discussed by the

[29] An example of professionals bending the rules, in this case to help produce richer research. I like to think Lipsky (1980) would have approved.

court. They needed therefore to give informed consent which necessitated the provision of information in advance and the opportunity to decline my involvement. The DFJ expressed to me her confidence in the parents' lawyers to discuss the research with their clients and ensure they understood it. My application was therefore made, and approved, as follows:

- To give the parents the option to 'opt out'. That is, the court would provide them through their lawyers with an information sheet I prepared setting out my purpose, the rules around confidentiality, data retention and storage etc[30] and inviting them to say, either directly to me or via their lawyers in court, if they objected to my observing the case, at which point I would withdraw.
- That the judge would orally repeat the above at the start of the hearing, giving parents the opportunity to object.
- Not to extend the right to give/withdraw consent to extended family members or professionals, it being impractical to do so. Regarding professionals, the DFJ's agreement with local authorities was over-riding. Regarding extended family members it was impossible for me to know in advance who would attend and in what capacity.

In the event no parent withheld their consent. One lawyer objected to my observing on behalf of a parent who was absent and had not received my information sheet, and I left the hearing. This refusal served to reduce some of the anxieties I had about the position of parents, indicating that the lawyer effectively safeguarded parental rights.

Conducting the study

Positionality

What was my position when collecting, and analysing, data?

In the introductory chapter I wrote about a lengthy and varied career in child protection and family justice, the benefits and challenges derived from this when venturing into academic study including (in the latter category and with reference to Van Maanen, 2011a) the need to try and clear one's head of preconceptions. Supervision helped in this regard. However, the extent to which a head can be

[30] See Appendix C.

cleared is (of course) limited. A belief system is fluid and opaque (in that pinpointing precisely what we believe, and why, is not always possible). Moreover, what is 'known' cannot be completely unknown, nor should it be. I would have been incapable of undertaking this study without recourse to years in the field, particularly given restraints imposed by remote working and HMCTS denial of my application to receive court papers. There is, however, a downside to insider status: having spent years thinking about the harms perpetrated by some parents, it took a conscious effort on my part, and some supervisory challenge, to contemplate equally the harms perpetrated by social inequality and flawed policymaking. Also, some things were taken for granted. For instance, a question put to me in the very latter stages of completing the thesis - 'why do families need to appear before a family court at all?' – had not previously crossed my mind.[31]

In trying to locate my position, or rather positions, I am indebted to Van Maanen's (2011b: p.77) description of 'a tacking back and forth between an insider's passionate perspective and an outsider's dispassionate one.' The outsider mode is the one I tried to cultivate so as to be receptive to the data and willing to look afresh at matters with which I had some prior familiarity. The insider mode was engaged both involuntarily as I made an emotional or cognitive connection to previous experiences, and consciously when, for example, making sense of what was going on under the surface: the hidden motives, what actors were 'really' thinking and the meaning of facial expressions.

Observing cases

The agreed plan with the DFJ was for me to watch 10-12 cases, ideally from beginning to end. The DFJ undertook to provide me with a sample that captured the variety of public law work measured by case complexity, different tiers of the judiciary and types of application. I observed 33 hearings across 11 cases, nine of which were care order applications. That represents about 45 hours of direct observation and, I contend, a substantial body of work that facilitates rich

[31] Having now considered the question my response is that, in the interests of protecting our most vulnerable children and ensuring that parents' rights are also upheld, there needs to be some manner of independent arbitration between state and family, though it does not, as noted in Chapter Three, necessarily have to take the form of a court as constituted in England and Wales.

description and robust analysis. I felt immersed in the work of MetroCourt notwithstanding my joining hearings remotely.

Table 2 sets out a short description of the cases that I observed together with (from left to right) the letter by which the case is identified in subsequent chapters; the section of the Children Act (1989) under which the application was made; the number of children; and the number of hearings observed. Some information is redacted to protect families.

Table 1: The Cases

Case	**Application Children Act 1989**	**No of children**	**Hearings observed**	**Description of case**
A	S31 care	2	3	Mother's mental health; children at risk of physical and emotional harm when she is acutely ill.
B	S39 discharge of care order	1	4	History of parental substance abuse and domestic abuse. Elder sibling applies to be special guardian.
C	S31 care	2	8	Sexually harmful behaviour (SHB) involving siblings. No previous child protection concerns. AKA 'the SHB case'.
D	S34 contact	1	1	Application by mother for contact with child who is subject to a care order and placed with father.
E	S31 care	2	3	Mother's mental health; father's physical health; adult sibling wishes to care for children.
F	S31 care	1	1	Breakdown of special guardianship relationship. Child

				previously removed from parental care.
G	S31 care	1	3	Substance abuse by both parents and concerns that children have suffered neglect
H	S31 care	4	3	Children allege physical and emotional abuse by both parents.
I	S31 care	2	1	Maternal mental illness.
J	S31 care	3	4	Mother dead in suspicious circumstances; father arrested and charged with her murder. AKA 'the spousal murder case'.
K	S31 care	2	2	Extensive history of domestic abuse; concerns that children have suffered neglect.

Where there was judicial and clerk continuity I watched cases more-or-less from start to finish, the odd hearing being missed because of other commitments, clashes of hearings, or the case being relisted and the court omitting to notify me. Where the case was reallocated to a different judge, or the clerk left and was not replaced swiftly, it proved impossible to see a case through. Consequently, though I watched all types of hearings – Case Management, Issues Resolution and Final – I saw fewer of the last of these than I did the others. I watched hearings conducted by all four tiers of the judiciary.

Virtually every hearing was fully remote. A few were hybrid as parents and their lawyers were physically present in MetroCourt when final decisions were made, with others (including me) joining online. Plans to hold fully attended hearings during my period of data collection were undermined by rising numbers of infections and further government restrictions.

The data derived from observation was collected between February 2021 and March 2022.

Each hearing started with a warning from the judge that making a personal recording of a family court hearing is a criminal offence, including recording via MS Teams. I therefore relied on handwritten notes that I transcribed immediately after the hearing. Keeping pace with the verbal exchanges in court was sometimes problematic and my attention was also taken by trying to pick up non-verbal cues and considering the significance of events. This is not unusual in ethnography: the researcher cannot help but focus selectively on what is deemed significant and downplay other matters. I believe that my fieldnotes were accurate but accept that I did not make verbatim records of every exchange (Emerson et al, 2011).

Simultaneous analysis was conducted, in line with grounded theory (Charmaz, 2006) by concluding the written record of each hearing with a section I entitled 'thoughts' where I logged immediate responses, emerging themes, questions to return to later, connections to previous hearings, events that went against the grain of other hearings I'd watched. It enabled me to make sense of events as I went along and retain control of the extensive data generated by the hearings.

Interviews with professionals

Requests to conduct professional interviews were made in writing[32] after about 80% of the observational data had been collected and analysed, and first drafts of the research chapters written. The purpose of the interviews was to draw on those with extensive practice experience to triangulate my emerging findings, and to help me make more robust sense of what I'd seen and heard. I owe interviewees a big debt: without their insights subsequent chapters would have been much flimsier.

The interview format was semi-structured with questions prepared in advance[33] but with scope for interviewees to raise and expand upon matters that seemed important to them within the parameters of my interest – public law proceedings generically and then more specifically practice during the pandemic. I generally started with an open question or two such as 'what do you think are the biggest

[3232] See Appendix D.
[33] See Appendix E.

challenges facing public law proceedings?' It was a style of interviewing akin to that described by Brinkmann (2013: p.31) as receptive.

I conducted twelve interviews, at least one with each profession active in the family court. The DFJ agreed to put forward one judge from each of the four tiers of the judiciary in MetroCourt plus a legal adviser, so five in all. There was a lengthy gap between the agreement being made and the interviews taking place. I prodded diplomatically in the meantime but interpreted the lack of response as a clear signal that the court was under severe pressure – confirmed by an email, into which I was copied, from a judge to a lawyer stating 'I am fiendishly busy…I have cases stacking up to utilise any available space' – and concluded that it might be wise to back off and let the court come back to me when they were good and ready. Regarding other professions, I opportunistically made use of my, and a supervisor's connections, to gain interviews with three lawyers, three social worker managers and one children's guardian, some of whom were active in MetroCourt and others elsewhere but clearly qualified to act as key informants. I consider this to be a purposeful sample: designed to allow me to capture the experiences and views of a small cohort of the four groups of professionals operating in family justice (judges, lawyers, social workers, children's guardians) within the limited resources available to me. As proposed by Tracy (2020) quality was more important than quantity.

Table 3 sets out a short description of interviewees and the references used to identify them in Chapters 5 to 8.

Table 2: Interviewees

Ref	**Professional status**
J1	DFJ and section 9 judge (authorised to sit in the High Court)
J2	Circuit judge
J3	District judge
J4	Magistrate
LeA	Legal adviser (to magistrates)
L1	Solicitor mostly representing parents or children in public law
L2	Lawyer with extensive experience of the family court
L3	Barrister mostly representing parents or children in public law

SW1	Consultant social worker in a local authority
SW2	Head of safeguarding in a local authority
SW3	Team leader in a local authority
CG	Children's Guardian

Interviews were recorded on MS Teams and subsequently transcribed with 'thoughts' added, replicating the practice regarding the recording of hearings. A copy of the transcription was offered to interviewees for them to amend as they saw fit.

Analysis

The researcher is faced with two broad decisions, whether/how to code and, linked to that decision, whether to make use of Computer-Aided Qualitative Data Assisted Software (CADQAS) to facilitate the labelling, categorisation and retrieval of data. If coding is undertaken then other judgements must be made. Should the field notes be coded line-by-line? If so, should it be done openly in adherence to emic principles (Charmaz, 2006) or should use be made of pre-selected codes as proposed by Miles & Huberman (1994)? When should coding begin? How many times should it be undertaken? How much data should be subject to line-by-line coding? The weight of opinion appears to favour the systematic coding of field notes but there are dissenting voices, notably Van Maanen (2011a) who argues that the hard intellectual labour required to understand and represent a culture is rarely stimulated by unreliable and uninspiring written records. In a similar vein Mitchell (2007: p.62) posits that ethnographers often rely on their memory with fieldnotes 'acting as aides mémoires rather than neutral data to be analysed on return from the field'. There are also mixed views about CADQAS from the positive (Miles & Huberman, 1994) through to the sceptical (Brinkmann, 2018) to those who do not have a strong view (Gale et al, 2013). Tracy (2020: p.244), whose extensive experience, practical wisdom and rejection of dogma spoke to me at many points when devising and conducting the study, sets out six questions, advising that a 'yes' response to one or more should lead the researcher to use CADQAS. Five of my

responses to the questions were negative and one was positive (more than 100 pages of text to analyse).

The case for using CADQAS was not compelling. Nonetheless, I decided to try it out, downloaded Nvivo, read the handbook (Woolf & Silver, 2018) which extolled its many virtues, enrolled on the training provided by the university, uploaded some of my data, undertook some primary coding. My experience was of most of my energy being absorbed by the mechanics of the software (exacerbated by Nvivo malfunctioning on a couple of occasions and needing to be reinstalled), leaving precious little for the more pressing matter of understanding the data. My capacity to make connections, articulate a thought, ask myself a pertinent question was impaired. I felt like the process was controlling me rather than vice versa. These concerns are reminiscent of those voiced by Davies (2002) who argued that CADQAS impedes rather than facilitates a deep understanding. Recognising that CADQAS is a means to an end, I abandoned Nvivo. To describe myself as feeling liberated is not hyperbolic. Mildly regretful as I am at not cracking the software, I am convinced it was the right decision.

My approach to analysis was as follows. Approximately half-way through data collection I started to code, convinced that making sense of the extensive data I was generating required this. The coding was done in a composite word document that contained all my fieldnotes. The primary cycle of coding was open and line-by-line, which had the benefit of generating multiple potential areas of study but also the downside of generating a mishmash of too many codes, some of which overlapped with each other. The codes were consequently refined with reference to the ‘thoughts’ inserted following each hearing together with notes I’d kept in the research diary of informal discussions with the judges and ideas that had occurred to me as the data was collected. I also had in mind numerous sensitising concepts (see above), themes that had emerged from the analysis of modernisation that featured earlier in the thesis. Consequently, the secondary cycle of coding was considerably more focused with some codes dropped, others clustered (two or more codes being amalgamated to avoid repetition), all refined so that their meaning was clearer. I then had 27 codes, each with a short definition, organised under five headings: is family justice adversarial;

complexities; practice meets policy; judging; Covid-19[34]. The method thus evolved subtly from (marginally) inductive to an amalgam of inductive and deductive elements.

I then started writing what I referred to as 'chunks of text' under some of these headings. I knew that writing would substantially change the sense I made of the data, bringing fresh insights, leading to ideas being rejected and causing new connections to be made. A more coherent structure – what would go in each chapter, what order the chapters would be presented in – would then (hopefully) emerge. Thus, in time, five data headings became four chapters. As new data came in from observing hearings and interviews I coded these too but more sparingly and with reference to the draft texts and where the data might fit. Alternatively, I sometimes made a note for myself in the draft chapters – for example, 'see case H hearing of (date)'. The reliance gradually shifted away from the codes towards the descriptions and analyses contained in the draft chapters and emerging themes I noted in a research diary or notepad. Periodically I went through all the data again to ensure I'd not missed something important or drifted too far from it. I found the 'thoughts' I'd written down immediately after each hearing surprisingly solid: sometimes I copied and pasted bits of them almost verbatim into the final versions of the chapters.

Barriers and Limitations

Tracy (2013: p.76) talks of an 'iterative dance between your research questions and your access', a recognition that there is commonly a gap between what the researcher hopes to do and ends up doing. Virgin ethnographer that I was, I'd done and overseen enough qualitative research before embarking on this project to have become familiar with that dance, and to anticipate that real world matters would intrude. What were they, and how much did they hamper my work?

The literature warns the ethnographer not to expect the red carpet to be rolled out. Mistrust and indifference are understandable responses. Any sense of

[34] See Appendix F. The decision as to what data to include in following chapters, and what to leave out, was largely determined by practical considerations. For example, I would have liked to investigate further the issue of the content and impact of expert witnesses but was impeded from doing so by various factors: being unable to view their reports; seeing few cases through in their entirety; not being present at advocates' meetings.

entitlement the researcher might harbour is best left at the door (Gonzalez, 2000). A PhD student has little leverage and claims that a thesis will radically transform practice (as made by some PhD students seeking to access Cafcass) would rightly warrant scepticism. Two judges were keen to have me present and immensely supportive. Others I felt, tolerated my presence out of deference to the DFJ. The same was true of the clerks, a couple of whom actively tried to keep me in the loop. Others said, for example, that they would leave a note on the file to include me in the next hearing but that is an ineffective mechanism when there are changes of judges, clerks and dates for hearings. There is no substitute for personal connections and personal responsibility, and it is hard to establish those within a large and busy system, especially so when all communication is mediated by technology. Consequently, I was unable to watch many cases in their entirety and the data is skewed towards the early stages of cases and towards the work of those judges who ensured I stayed connected.

Immersion in the field is one of the established principles of ethnography, albeit one that has been tempered by pragmatism. I have referred above to (impressive) child protection ethnographies that owe as much to the art of the possible as they do to steeping oneself in a culture. In the initial stages of planning, I pictured myself having unfettered access to all aspects of the court's operations, gathering data freely from multiple sources, including families. This romantic notion was swiftly quashed on realising that it risked being perceived as compromising justice and thus breaching the principle of ethical research to do no harm. I still harboured aspirations of hanging around in the judges' quarters, talking to whoever was willing to engage in discussion with me, overhearing conversations, moans, triumphant notes and jokes, being invited into judges' meetings, becoming so familiar and trusted that I practically merged into the background. This ambition too was thwarted, this time by the pandemic. Setting foot in the court would not have guaranteed that any of these things would have happened; operating online throughout ensured they did not. The influential informal discussions with two judges aside (I have made extensive use of these in subsequent chapters), I witnessed only the formal business of court hearings – rule-governed, frequently starchy, periodically performative, emotion suppressed, much left unsaid.

Would my being physically present in court have produced richer data? It depends on how my presence was perceived but my speculative answer is yes, there would have been in time some lowering of the guard and access to what judges really thought. It might have been a slightly more collaborative study, and I might have felt less like an outsider and more like I was contributing, if only by asking the odd question. I also think there would have been more opportunities for me to ask if I could observe hearings and check what had happened to a particular case. Face-to-face communication is qualitatively different from communication that is mediated by video or phone: more will be said about this with reference to the family court in chapter 8.

Finally, there is the business of the size of the samples: 33 hearings across 11 cases in one court and 12 professional interviews. It would be unwise to make grandiose claims on the back of these. However, I have no intention of so doing, and the samples are, I contend, in line with what can reasonably be expected of a PhD thesis, particularly conducted by someone one who has extensive experience of child protection and family justice. Moreover, I had seen as many research projects flounder through over-ambition as I had seen fail through a lack of data. I had also read Miles & Huberman's (1994, pp. 46-47) terrifying account of project 'arithmetic', that is the massive investment of time required to support the direct interaction with participants. Context is important here too: it would have been inappropriate and unwise to ask too much of the court. When writing up the study I never felt that I lacked the data to produce an engaging and coherent analysis. On the contrary, the challenges were how to compress the extensive data into four chapters of about 10,000 words each and deciding what to omit.

Reflections

These are my reflections on the methodology in bullet-point format:

- Ethnography is possible within the family court and it has the potential to generate rich description.
- Gaining access is arduous. Obtaining the formal approvals took an inordinately long time given that neither the University nor HMCTS raised serious concerns. The requirement to pursue the applications sequentially slowed the process down.

- The active and enduring backing of the DFJ was a necessity.
- However, judicial independence, together with a large and fluid population of professionals and family members, meant that the DFJ's support and formal approvals did not guarantee free access. There were significant ethical and practical matters to be addressed to ensure that vulnerable families were not harmed, justice was not undermined, and professionals felt sufficiently comfortable to let me in.
- The ethnographer needs to cultivate humility. It is reasonable for those who are observed to be mistrustful of the competence and motives of the observer. Establishing trust is important but hard with the fluid population of the family court. The pandemic, and my not setting foot in MetroCourt, probably amplified the wariness of those being observed.
- Clerks play an important role in keeping the ethnographer sighted of changes to hearing dates and judicial allocation. Making the personal connections with the clerks is also, however, hard when physically distant.
- Notwithstanding my extensive experience in the field that enabled me, for instance, to make educated guesses at what was going on beneath the surface, conducting interviews was essential to enhance my understanding and provide alternative explanations.
- The ethnography literature exerted a significant influence on the study, not just in the retrospective conceptualisation of actions taken but prospectively in its design. Particularly helpful were the texts on the various spectra on which the ethnographer must operate (emic-etic, overt-covert, observer-participant) and the factors that dictate that determine one's position, including personal preference and context. There are, however, very few accounts of conducting ethnographic research in the family court and I had to work out for myself how to balance operating ethically with the requirement to gather data.
- I started out open-minded on the matter of inductive-deductive methods and ended up with an approach that drew on both. That worked for me in respect of this study.

Chapter 5: The Work and Function of the Family Court

Introduction

This is the first chapter of four that present findings from the ethnographic study conducted in MetroCourt. It addresses research question 3: what is the work and the function of the family court in respect of public law matters?

In this chapter I argue that the court's work is complex, and not just by virtue of the problems many families face. As I show, the events that triggered proceedings are sometimes hazy and disputed. The support that has been provided to family before the proceedings is in doubt, as is the support it will receive after. New problems (or new understandings of extant problems) emerge, causing disruptions. The solutions that the court finds are commonly fragile. The permanence that the court is expected (by legislation) to provide is elusive in the context of entrenched problems and a family support system that is unable to provide the help many families need. Consequently, some families find themselves back in court. There are also diverse views concerning the role of the extended family. I further argue that the function of the court is fuzzy, commonly including mediation between the family and local authority, and that a better distinction should be made between those cases that need to be subject of court applications and those that can be safely handled without recourse to the court. These are themes that featured previously when discussing modernisation and many will resurface in subsequent chapters when the complexities of public law work are further discussed: adversarial/consensual justice, then case management and finally the shock of the pandemic.

This chapter starts, as do the subsequent three, with a vignette provide vivid and affecting introductions to themes to be explored in depth in the chapter. The style of the vignettes owes a debt to Van Maanen's (2011b) description of an impressionist tale in which the reader is invited to relive the experience, actors are brought to life, motives are ascribed, a degree of literary license is encouraged in the telling. Thereafter, notwithstanding the extensive use of metaphor and simile, the style is a touch more in keeping with the confessional

tale (also Van Maanen, 2011b) – making use of personal reactions, trying to make sense of events, positioning oneself as both insider and dispassionate outsider.

The vignette is followed by three sections: an account of the families whose cases I observed, a discussion of expectations of the court, and the complexities that feature in many cases. The focus then shifts to two of the solutions open to the court – reunification of the child with parents and kinship care. The chapter concludes with a discussion of the court's function, then a chapter summary.

In the body of this and subsequent chapters the cases are referred to by the letter ascribed to them in table 2 (Case B for example) located in the previous chapter. Two cases are also referred to by key features for ease of reference: case C is also 'the SHB case' and case J is 'the spousal murder case'. As will become clear below these cases are qualitatively different from others. Also, they entailed (and I observed) more hearings than others, and for these reasons they receive more attention in the text.

Interviewees are identified by the reference I gave them in table 3 (J3 or SW2 for example denoting a judge or social worker respectively) also located in the previous chapter.

As indicated in Chapter 4 I spoke informally to two judges after hearings over which they had presided. Their contributions are signalled by a phrase such as 'a judge told me': the absence of a specific attribution (such as J2) tells the reader that this was an informal discussion, rather than something said within a formal interview.

> ***Vignette 1 (Case C, 'the SHB case')***
>
> *An online hearing, MS Teams, everyone not much larger than the image that sits in a passport. We're waiting for the hearing to start, silent and blank-faced. This includes the parents whose lack of expression gives the lie to what they are surely feeling. They sit together in front of their computer. Behind them can be made out a photo, a posed family portrait, the children smartly dressed. The detail is fuzzy, but the impression is of smiles and everybody at ease in each other's company. Photographs are unreliable narrators and over the coming months an expert multi-*

disciplinary assessment team will pore over every aspect of family life, trying to work out amongst many other things whether this is a fundamentally caring and contented family leading hitherto unremarkable lives or whether something darker lurked beneath the façade. If you saw that photo and heard what I was about to hear I'd wager you'd catch yourself hoping it's the former. Let there be something good in these children's lives, something that might give them strength and hope for their future. They are going to need it.

We aspire to contentment and stability, all the while knowing that our ordered lives can descend into sadness and chaos in a moment. Such thoughts are pushed down but, when they force themselves into the imagination, they take the form of unexplained lumps, a car careering out of control, a note left on the kitchen table. We do not anticipate the discovery of an incestuous relationship between our children. Well, the unimaginable happened to this family. The court refers to the incident(s) – a lawyer reflects that 'there is still some fog in this case as to what happened' - as sexually harmful behaviour (SHB) to mitigate the stigma and to take a neutral position for now on causality while social workers, police and expert assessors try to work out what has happened and why. How times have changed, I think. Back in the day, pre-internet, we'd have thought it improbable that young children would engage in such sexualised behaviours unless they'd suffered some manner of maltreatment or profound disturbance. Now the first thought that occurs is the ubiquity of free internet pornography and its toxic impact on the immature.

The immediate consequences of the SHB are extensive. There is disruption to all aspects of the children's lives: where they live, who looks after them, where and when they see their family, their education and friendships, cultural and religious ties. They are described as 'broken' in foster care. Sometimes the court has a good option available to it, one that promises to boost the child's welfare. Other days, like today, it can only hope to find the least flawed option. The judge determines that the children should remain in the care of the local authority pending the completion of the expert assessment. A better-informed, and potentially different,

decision will then be made. The children will have complex needs and the parents' capacity to support them needs to be understood and a firm plan in place. It is in everyone's interests that decisions are not made in haste. The door is kept open to a more positive outcome and a rough path sketched out leading to it. I recognise sound judgment delivered compassionately and admonish myself for my momentary wish, against all my professional instincts, that the judge would just send the children home. I make a mental note to devise a code to capture the way in which justice has been dispensed. In time it will become HDM – how it's done matters.

At the conclusion of the hearing I wonder privately about what will happen to these children, long after the court has done its work. I conjure up a best-case scenario in which resilience, emotional intelligence, a caring family and intensive expert help produce a healthy future. And then the opposite in which it proves impossible to shake off the past and their lives are forever tainted by loss, regret and shame.

The hearing has lasted two hours. The impact of the events that brought the family into the court will last a lifetime.

The families

The family court is where many families are sent, one after another in a steady stream, between 17,000 and 18,000 public law applications a year in England alone[35]. Each case is unique but with common elements: allegations of significant harm to children; parents (or carers) portrayed as abusive, neglectful or not coping; child protection networks unable to resolve the problems outside of the legal domain. There is no other recourse available to the local authority that feels it cannot contain familial difficulties, nor more broadly to society, beyond the family court. The court does not have the reassuring presence of a backstop: it is the backstop, and the child welfare buck stops there.

The families came to MetroCourt in different shapes and sizes. The children's ages ranged from a few days to 16 years, the number of children subject to the application from one to four. They came from various communities, had diverse

[35] Public law data - Cafcass - Children and Family Court Advisory and Support Service (Accessed 2 November 2021).

ethnicities, observed different religions. Each of the four formal categories of maltreatment (physical, sexual, emotional, neglect) was cited at least once in the cohort of cases I watched: in some cases more than one category was raised as grounds for the application or emerged later in proceedings as a fresh concern.

The fog noted by a lawyer in vignette 1 was present at the start of many cases, with incompatible versions of the history and haziness everywhere. Parton (1998: p.6) refers to the 'pervasiveness of uncertainty and ambiguity' in the child welfare arena. I see this play out in many hearings as I listen to lawyers vie to establish their account of history as being the correct one. The parents had breached the agreed safeguarding plan, says one. No, they hadn't, counters another. The children were endangered by parental psychosis. That has been overstated. The significant harm sustained by this child relates to recent care he has received. But what about the harms perpetrated in a previous placement? There is more than one way to understand highly complex and dynamic child protection situations (Shephard, 2006) and the 'truth' is evasive.

Case C is, in one respect, an outlier in that it is concerned with a family that was ostensibly functioning well until the discovery of the SHB turned their lives upside down. Most applications are based on persistent psychosocial problems, together with parental lifestyles that are described in court as chaotic. The high prevalence of such problems within families that feature in s31 applications is well established (for example Masson et al, 2008) and the recitations, by local authority lawyers, of the parents' difficulties cite the same difficulties - substance abuse, domestic violence, poor mental health, learning disabilities. To that mix can be added ill health, low self-esteem and raised anxiety that are commonly associated with social and economic inequalities (Featherstone et al, 2012)[36]. Austerity has contracted the welfare state and increased the vulnerability and stigmatisation of such parents (Tyler, 2020). Parental frailty may be further exacerbated by the instigation of care proceedings:

> *'Many of the parents that I'm dealing with are vulnerable. They may have less than amazing cognitive functioning, they may have a degree of mental*

[36] For example, one father in my study had no bank account. The local authority offered to fund a passport or driving license to allow him to open an account and thereby handle the family finances.

health problems which affect their functioning, English may not be their first language, they might as well be socially isolated, they're generally pretty scared because social services are saying this horrible thing about them, and they might lose their children.' (J3)

It doesn't take a huge leap of imagination to grasp how the multiple familial fragilities interact with each other. Just one scenario: life is hard, joyless; drugs bring temporary relief from the gloom; behaviour strays further from expected norms of parenting; life becomes yet more stressful. A downward spiral is set in motion that acts to the detriment of children who are exposed to parental psychosocial difficulties (Harwin et al, 2019) and who start to manifest problems of their own. Local authority lawyers cite another typology of problems, these relating to children: developmental delay, special needs, attention deficit hyperactivity disorder, emotional/behavioural problems. Consequently, parenting gets tougher rather than easier. Local authorities become involved but the relationship between them and the parents is commonly fraught (Masson et al, 2008; Harwin & Golding, 2022). As noted by the judge (J3) quoted above, the threat or reality of care proceedings acts as a further significant stressor for some parents. I find myself reflecting on the paucity of the lives of many families that appear before the court. Concerns accumulate and history bears down heavily. Resources, already meagre, become stretched to breaking point and the pack of cards comes crashing down:

Examples 1

A mother lives apart from the family, mentally unwell I infer. Something bad has happened in the past – 'a difficult time 10 years ago'. The father has a medical emergency and is permanently incapacitated. The eldest child, barely an adult, wants and tries to care for his younger siblings but his relationship with the local authority is strained and the latter is unconvinced he can provide the long-term care they need. (Case E)

The mother has periods of acute mental illness, exacerbated by not taking her medication and by substance abuse. When ill she has put the children

at physical risk. She has lost older children[37]. The father is more stable, provides acceptable care, but struggles to keep the children safe when mother is unwell. Two traumatic events lead to a marked deterioration in her mental health. (Case A)

There are few quick fixes for entrenched and manifold problems such as these. Masson et al (2019) found that almost all families in their study had a substantial history of involvement with children's social care: this is true of practically every case I encountered. Cases C and J, the SHB case and spousal murder case respectively, were the two exceptions as those applications were triggered by catastrophic incidents rather than an accumulation of concerns. Every other family was previously well-known to the local authority and vice-versa. No involvement, family support, child in need plan, child protection plan, pre-proceedings work: many struggling families travel up and down that scale. Some mature, become stronger and disappear from the local authority radar without entering the family court. The families I see have not enjoyed such fortune. Their problems have not been resolved or have returned in some mutated form as life has thrown fresh challenges at them.

Permanence?

What is it exactly that we expect the family court to do? The law[38] makes reference to the court's role in scrutinising the permanence provisions of the local authority care plan which sets out the placement (or type of placement) in which the child will remain long-term, ideally for the duration of their childhood. Implicit in the principle of permanence is the hope that the child will not just remain in that placement but also be content, form lifelong supportive relationships, have their needs met and helped to transition into adulthood (Selwyn, 2010). It is a worthy goal. I note, however, that nearly half of the eleven families I observe have been previously involved in public law cases. Two of these cases involve vulnerable mothers caught up in recurrent proceedings (Broadhurst et al, 2017). One is referenced in examples 1, the striking feature there being that the children have been subject to proceedings or an order of the court for practically all their lives

[37] The inference was through care proceedings – see Broadhurst & Mason (2019) for a discussion of how child removal can act as a gateway to further multiple maternal adversities.
[38] S31 of the Children Act (1989).

to date – a s31 care application, a supervision order that was extended, then a further care application. The local authority and court have effectively micro-managed the family's life for a good two years. Here is a short account of the second 'vulnerable mother':

> *Example 2*
>
> *She has been beaten by one partner after another. Accustomed as I am to accounts of domestic violence, I feel sickened by the savagery of one such attack. She is now with a new partner, her relationship with him being 'excessively conflictual' – a description that does not inspire confidence. Attached to, or prey to, violent men whose lives are as impoverished as hers she has lost children previously (in circumstances that are not spelt out in court) and risks losing two more now. Her mental health is described as poor, as it would be when every drop of self-worth has been literally and figuratively beaten out of her. Much as one would want her to find a decent partner, or make a go of it alone, it's hard to imagine the pattern being broken without remarkable fortitude on her part and sustained intensive professional support. (Case K)*

The other repeat cases entail second applications on children previously in proceedings. Two involve looked after children subject to care orders, one application concerning parental contact (s34), the other an application by a parent to discharge the care order (s39). The care application in the final case that has previously been before the court is prompted by the breakdown of the child's relationship with their special guardian. The child's behaviour has turned out to be very challenging and the judge is unconvinced that the local authority has provided proper support to the special guardian.

So, the purpose of the family court, as set out in statute, is to facilitate permanence, but some solutions are destined not to last with both mothers (Broadhurst et al, 2017) and fathers (Philip et al, 2021) at risk of being repeat respondents in care proceedings. The aim that family justice should provide certainty for children and families is driven more by hope than experience (Beckett, 2001). Positive changes made during proceedings do not necessarily sustain when those proceedings end (Masson et al, 2018; Dickens et al, 2019;

Lutman & Farmer, 2013). There have been concerted efforts to provide better support to mothers who have lost children (notably the Pause programme) which have produced promising outcomes including a reduction in infants subject to care applications (McCracken et al, 2017; Boddy et al, 2020) but the provision of services to parents who have lost children is patchy (Mason & Wilkinson, 2021). The past can sit like a dark cloud over the present. Judges know this – 'they'll be back' says one to me of a family after a case concludes. To question the durability of the family court's work is not an indictment of the decisions it makes. Rather, as posited by Complexity, it reflects the unpredictability and uncontrollability of human systems, particularly those that pass through the family courts given the extraordinary difficulties, rupture and damage many have known.

Complex / straightforward cases

Is there such a thing as a straightforward case? Can cases be reliably placed in a typology that has straightforward at one end and highly complex at the other? These are academic questions, but they also have administrative and practice dimensions too. To answer them I start by examining allocation, then case complexities and finally the dynamic properties of proceedings.

Case allocation and judicial continuity

Upon receipt of the application public law cases are allocated, the process by which this is done being summarised by the Judicial College (2018). In short, there are four tiers of judiciary in the family court (magistrate, district, circuit and high court) and a gatekeeping team to determine which level of judge should hear a case depending on various criteria relating to the complexity of the case. These include the seriousness of the abuse, disputed psychiatric issues and questions of capacity. There is flexibility by virtue of the potential for cases to be reallocated in response to changing circumstances but doing so disrupts judicial continuity which, as set out in Chapter 3, the Family Justice Review (FJR) (2011b) sought to promote, and which was found by the tri-borough project evaluations (Dickens et al, 2014; Beckett et al, 2014) to have been boosted. I see some cases which have the same judge throughout, others in which there is discontinuity, frequently so in one instance. The reasons for reallocation vary, including the involvement of the Official Solicitor and a very short-notice application which forces the court

to allocate the case initially to the 'wrong' judicial tier and then later re-allocate it to the appropriate one.

There is a second consideration that relates to the immense pressure courts are under derived from increased demand, the impact of Covid-19, rising case durations and backlogs. The consequence is chock-full judicial calendars and reduced availability. Relieving that pressure and reducing backlogs entails a careful use of the court's resources as advocated by the President of the Family Division (President) (McFarlane, 2021). Recovery will be facilitated by there being some cases that require fewer hearings and less investment of court time. Family justice *needs* some cases that it can deem to be straightforward and handle accordingly. To what extent it *gets* such cases requires discussion.

I learn from a judge that well under 10% of public law cases in MetroCourt are allocated to magistrates, compared to 25% in some courts. Hazarding a guess as to why that may be so is not over-taxing as MetroCourt serves ten local authorities some of which rank amongst the highest in the English Indices of Deprivation (Ministry of Housing, Communities & Local Government, 2019). Bywaters et al (2017) found that the most deprived authorities had, as a result of austerity politics, most reduced their expenditure per child in children's services and had invested more of their budget on looked after children rather than the provision of family support. In the authorities served by MetroCourt there are also substantial communities for whom English is not their first language, a factor that, as we shall see, absorbs time in hearings and has a bearing upon the appointment of experts. The relative under-reliance on magistrates in MetroCourt suggests that the uncomplicated case is thin on the ground. I examine that hypothesis now in more detail.

Case complexities

Axiomatically the SHB case was complex, above and beyond the massive transgression of a familial taboo. In practically every case that comes before the court there is at least clarity on one matter: who is alleged to have caused the harm (generally a parent, occasionally another adult carer) and who is the victim (child). The waters of culpability are very muddied in the SHB case. The parents are not thought to have caused direct harm, their faults being confined to not

reporting the incest and an initial lack of co-operation with the local authority, actions which are interpreted in diametrically opposite ways – irresponsibility and untrustworthiness or an entirely comprehensible parental instinct to protect the family integrity. ‘There is something in the parents’ complaints that the local authority is unclear why they are responsible for the harm’ says the judge in the hearing. The children’s immediate safety dictates that they be removed but the prevention of that harm inevitably brings other harms: trauma, separation, disruption. Establishing the ‘truth’, contact, education, the children’s well-being, putting therapy in place – at some point each of these proves difficult. There are setbacks along the way, and seemingly endless problems for the court to solve.

The spousal murder case was another highly complex one on account of the interplay of criminal and family jurisdictions. One of the principal problems relates to disclosure of evidence from the criminal to family courts, the former being nervous that information it shares will be used in the latter thus compromising the prosecution. ‘We’re left working in the dark’ a judge says to me, talking about a similar case in which the family court operated on an erroneous understanding of how the death had occurred. The tensions between the two jurisdictions become plain at a linked hearing (both criminal and family) of the spousal murder case. One of the children has been identified as a prosecution witness in the criminal court. She has already provided her evidence-in-chief by video recording. The issue then arises as to how the cross-examination is to be conducted, a matter that is addressed within legislation by s28 of the Youth Justice and Criminal Evidence Act (1999). Numerous case management matters are raised and determined: editing of the recording of the evidence-in-chief; agreeing questions to be put to the witness; who is permitted to propose questions; how the child witness is to view her evidence before being cross-examined. The scheduling of the cross-examination hearing is a particular headache as it must be heard soon in the interests of child welfare (in the words of the criminal court judge ‘the case is screaming for this to be done ASAP to allow child to be done with it’) but not so soon as to prevent the toxicology, post-mortem, CCTV and telephone evidence being available as that will have a bearing on questions put to the child. Delaying the hearing means delaying the psychological assessment and therapy

everybody accepts the child needs (and possibly the therapy her siblings need too).

The judges say that they have discussed the case and are overtly respectful of the other's jurisdiction. They do not bump heads, but the two court systems do. Something must take precedence and it is the criminal jurisdiction as it is in possession of all the evidence and controls when, and how, that data is shared. Therapy will have to wait. I wonder what sense a bereaved and traumatised child makes of it all. The argument that this case is extraordinarily complex is, I take it, made. But there is more, much more. The immigration status of the family member who is caring for the children is unclear. Little is known about the parents who originally came from different countries. The identity of the father of one child is uncertain. One of the children is approaching the age at which the court will be unable to make a care or supervision order, but the local authority appears to be impeded from making a timely decision as to whether it seeks such an order by the gaps in information and delay in expert treatment.

The dynamic nature of proceedings

Not every case is as messy or dramatic as the SHB and spousal murder proceedings. Further, they remain relatively rare occurrences though I was told by judges that neither appears as infrequently as one might imagine. There were three spousal murders in one local authority served by MetroCourt last year and applications following the identification of SHB are anecdotally on the rise. The other cases I observe present more familiar and less convoluted problems. Some interviewees talk about 'bread-and-butter' or 'bog-standard' cases referring to applications characterised by the enduring parental social and health problems that dominate in my sample and beyond. A judge tells me that it is generally possible to predict the level of complexity at the beginning of a case. However, the judge adds, circumstances do change: a child removed for physical abuse discloses sexual abuse mid-proceedings, a parent is deemed to lack capacity. S/he tells me of a more dramatic example in which a medical expert, providing evidence towards the end of the proceedings, supported the parental explanation for a broken bone, thereby radically altering the outcome of the case. This story echoes concerns voiced by, for example, the Public Law Working Group (PLWG)

(2019) regarding sudden dramatic shifts in the direction of a case and the difficulties in flexing to meet these in the context of a statutory timeframe. All cases, even the bread-and-butter ones, have the potential to be more complex than may initially seem to be the case, or to become more complex as the case progresses. There are no empirically proven criteria for distinguishing between the complex and straight-forward case (Fish & Hardy, 2015). The techno-rational solutions of the Public Law Outline (PLO) and modernisation (see Chapter 3) assume that virtually every case can fit neatly inside a framework and timeframe. The wisdom of this assumption is, as previously argued, questioned by Complexity as it is by the daily experiences of those working in MetroCourt.

In the latter stages of data collection I witness an instance of serious disruption. It comes in the spousal murder case and is derived from human error. It is by no means the only example of human error, but its consequences are potentially much graver in this case than in others. The local authority legal team omits to implement a court order seeking disclosure from the police of information they hold that is germane to the family proceedings. About four weeks are lost. The difficulties are exacerbated by the key piece of evidence – the video of the eldest's child's evidence in chief and cross examination – being the property of the court rather than the police, necessitating a separate request for disclosure, a process that is not swiftly grasped by the lawyers notwithstanding the judge bringing it to their attention. The small window available to the local authority to seek an order before the child reaches 17[39], and to the court to fit in a hearing, shrinks further. There is precious little slack in the system, the court calendar being full. A good hour of a Case Management Hearing is given over to discussing, and occasionally disputing, what steps can realistically be taken now. The judge stresses the need for pragmatism: 'let me say what I'm thinking, the obligation was on the local authority to drive the case forward, it needs to be driven, the better way may be for me to say there is no prospect of you getting yourselves together before (the child reaches 17).' Mother deceased, father prosecuted for her murder, children severely traumatised, the prospect of stability delayed: surely nothing else can go wrong? Alas, the local authority team legal has also omitted to obtain expert immigration advice for the relation who is caring

[39] The court cannot make a care or supervision order on a child that has reached 17 years.

for the children and who is willing and (on evidence gained thus far) able to provide long-term care. Her visa will shortly expire, she risks overstaying and removal, an action which would be, in the estimation of the court, catastrophic for the children's welfare.

That is the largest disruption I see in a case. There are numerous others caused by new information, fresh understandings and changes of direction. These are a few of them:

Examples 3

The LA lawyer is receiving instructions in real time mid-hearing. They report to the court that the emergency placement has broken down but that another placement has been found and is thought to be viable. (Case H)

The LA changes its application at the last minute. It no longer seeks to remove the children today as a potential carer has come forward. At the next hearing the plan has changed again. (Case E)

The special guardian has indicated they wish to relinquish the child but then reconsiders this, wishing to be assessed. (Case F)

The embryonic plan for one parent's extended family to care for a child with the other's extended family providing support and respite care is undermined by reciprocal allegations that the child will be unsafe with the other party. (Case G)

Towards the conclusion of proceedings a further child protection inquiry is undertaken when a child suggests she has been struck when in parental care and refuses parental attendance at a looked after child review. (Case C)

The transition from chaos to order is rarely linear in MetroCourt. Adults change their minds about what they wish to provide for children. Professionals modify their views as to what should happen during and at the conclusion of the case. Children are ambivalent, their wishes and feelings fluctuate and there is no simple truthful account of what they want (Cooper, 1999). Humans behave in unforeseen ways, particularly so when in a state of high emotion, and their actions have

consequences for the management of the case. Plans put in place, and orders made by the court, at the start of proceedings succeed in stabilising some volatile situations, but others fail, and a new solution must be found. Solving one problem leads to other problems as when, in case H, following a serious physical assault several children are made subject of interim care orders and placed elsewhere. Their immediate safety is the priority and is thereby achieved. The child whose disclosure led to the application expresses regret at having spoken of the abuse. Separating the children from each other is narrowly averted. The adult response, provided by a temporary carer, social worker or teacher will, I expect, be to provide assurance that the child bears no responsibility for what has happened. This is a sophisticated concept for the young child to grasp. Guilt and anxiety follow, principally articulated through the deteriorating behaviour of the children in Case H. Similar examples are found elsewhere. Moving a child necessitates changing the plan for the provision of education and contact. This can significantly disturb a child's life, create dilemmas for the court and require the local authority to undertake an extraordinary amount of contingency planning.

And finally, there is confusion. Barely a single legal submission starts without the lawyer apologising to the court for the late filing (or non-filing) of their client's position statement. Or, in a variation of this theme - 'Your Honour will have seen a track-changed version of the threshold document.' 'The version in my bundle is not track-changed.' There is a muddle as to how many contact visits have been made. A mother fails to turn up for the first hearing. Various explanations are mooted in the hearing: pregnancy complications, she's gone to ground, coercion by partner, administrative error. An attempt in another case to discover what efforts were made to meet the care plan agreed by the court at the conclusion of previous proceedings is thwarted as the relevant local authority has suffered a cyber-attack and data is lost.

I didn't see the disruptions, wicked problems and confusion cause seismic interruptions to the work of MetroCourt. On the contrary, I'm struck by how readily it took these in its stride. I expect the court has grown accustomed to it. The need to adapt and get on with the job in hand despite the turbulence (amplified by Covid-19) is identified by a judge:

> *'But from the end of last year, all the way through from the beginning, everybody has said we're going to be getting evidence as we go along here. But you know, we've got to make a decision. We've got to get on with it. And that's the way we've been doing it.' (J1)*

However, the disturbances do contribute to the view I gradually came to that the straightforward public law case is rare. Many are more complex than they may appear to be on first sight (Kaganas, 2014; Pearce et al, 2011). Yes, they are straightforward relative to other cases, but, stripped of that context, no. There is too much at stake, family justice is too dynamic, the consequences of decisions made during the proceedings are too unpredictable for the adjective to mean much. Modernisation is predicated on most cases being simple and thus suitable for a statutory timeframe: my observations chime with the experiences of practitioners who commonly find that most cases are complex (Pearce et al, 2011).

Before we move on, I want to share one image that came to me when writing up notes after a hearing. I was reminded of the game of pinning the tail on the donkey that was all the rage at children's parties in the early 1960s. Picture of a donkey, child puts on blindfold, is spun around, guesses where the tail should go, sticks in a pin. Maybe that's what it feels like sometimes, I think, to be working in the family court, trying to determine the best course of action through the haze of uncertainty and changing circumstances. Then a further thought. In the kids' game the donkey is static. In the court it is a restless animal, prone to shuffling around and bucking periodically.

My attention turns now to the role of the immediate family when the court is considering the solution to the issue of where the child is to live. I start with reunification with parents and then move to kinship care. As I shall show, both solutions give rise to complications.

Reunification

One of the mechanisms in place to expedite timely decision-making is parallel planning, a term that denotes working towards the safe reunification of the children with parents (or their remaining in parental care if not removed at the start of proceedings) while simultaneously forming a back-up plan. The common

default option for the latter is kinship care as that enables the children to be looked after by extended family, or somebody else well known to the parents. I'll examine that shortly. For now, let's just consider the issue of reunification.

> *Example 4*
>
> *Both parents have serious drug habits and extensive criminal records connected to these. Their baby is born addicted to opiates and an interim care order (ICO) is made to place it in foster care. An assessment by a forensic psychologist and hair-strand testing is ordered in respect of both parents. By the following hearing father is in prison and mother's whereabouts are unknown. Through his advocate, father voices his support for the local authority plan to further investigate a placement with the extended family. Mother's advocate has been unable to take instructions from her and can make no submissions on her behalf beyond expressing the personal view that the local authority plan seems appropriate. The assessments ordered at the last hearing are discharged. (Case G)*

By the midway point of this case the question of reunification has been answered – it's not going to happen. By their words and/or deeds the parents have ruled themselves out. The viable options open to the court are narrowed down to two, extended family or adoption of the new-born child. It was rare to find reunification ruled out so clearly and swiftly. I learnt from a judge of a second SHB case, involving young siblings, that resulted in the birth of the baby where it was accepted by all from early in the proceedings that the baby would be adopted. Likewise, the writing was on the wall in the spousal murder case once the father was prosecuted. Bar his being acquitted in the criminal court (operating a threshold of beyond reasonable doubt) and being found by the family court not to have caused the death (operating a lower threshold of balance of probability) there was no realistic prospect of his resuming care of the children. More commonly the issue of reunification was finely balanced. This is exemplified by Case A. In line with Bainham's (2013: p.139) observation that 'in practice the threshold plays only a marginal role in many public law proceedings which are in fact dominated…by the welfare principle' the local authority argument that the

significant harm threshold is met is not disputed by the parents: they concede that the children have sustained emotional and physical harm. The history of mother's fluctuating mental health, together with an excessive use of cannabis, suggests further crises are likely. When politicians periodically make blithe and legally dubious pronouncements that more children should be taken into care and/or adopted (Parton, 2014; Bainham, 2013) it is families like these that I am sure they have in mind. In practice, finding solutions to complex familial problems isn't so easy. Courts are understandably reluctant to remove children when the implications are so drastic, and evidence is so ambiguous. The father has, as noted by the court, demonstrated that he has both motivation and capacity to raise the children. There are 'strong and warm' relationships between the children and both parents. The parents have a solid relationship. The local authority's initial application was for a care order but at the final hearing they indicate that they now support the making of a one-year supervision order, that becoming the determination of the court. This case resonates with patterns identified by Harwin et al (2019): just about a third of care order applications conclude with a care order; and rather more supervision orders are made than are sought at the start of proceedings.

The family in Case A, and others like it, present big challenges for child protection systems and courts alike. The standard of care is neither demonstrably bad enough to point unequivocally towards a permanent separation nor good enough to induce much faith in a significantly brighter future. Many resources are invested in supporting the family to provide more stability. In other European jurisdictions (Berrick et al, 2015; Boddy, 2019), where the prevailing ethos is of the extended provision of family support and state coercion only when such inputs have failed, supporting the family to stay together would be considered a normal and proper response. In contrast, I fancy the support plan agreed at the final hearing of this case was perceived as time-limited and heavily contingent upon parental co-operation. This is that support plan in abridged form: social work visits, family support worker, contact centre, health visitor, hair-strand testing, family centre, community mental health worker, third-sector mental health support, online courses, review meetings. The full authority of the court is invoked to emphasise to the parents that their compliance with the support plan is expected and that

the local authority may feel it has no option but to submit a third care application if their cooperation wavers. Thus, it is tacitly acknowledged that the solution is not permanent but rather hinges on the parents' commitment and ability to make good use of the extensive services being provided while avoiding becoming reliant upon them. Both parents' advocates articulate nervousness about their clients becoming overwhelmed by inputs and successfully dispute the children's guardian's submission that the level of social work visiting should be stepped up. It's a thin line between helping parents to gain resilience and inadvertently undermining them. The solution may turn out to be just another problem.

The court's intervention into this family's life is over, for now at least. It was not called upon to make a binary choice on the issue of whether the children should stay with, or be removed from parental care, a consensual view having been reached on that matter[40]. The court has had an impact, albeit not primarily one of adjudication. It has provided what Hunt (1998: p.283) referred to as a 'a legally protected space within which to assess, and if possible work towards a resolution of, family difficulties or to demonstrate that that was not possible.' The instability that had characterised family life has been contained, boundaries laid out, a setting created in which the local authority and parents have for now resolved their differences. A degree of stability and sense of safety have been introduced into a situation that must have felt perilous for all concerned. A supervision order, and the judge hammering home the message that the agreed plan must not be breached, may give the local authority a touch more leverage, and sustain parental acquiescence with the safeguarding plan, though I note scepticism in the research literature as to the efficacity of supervision orders (Harwin & Golding, 2022), notably a suggestion that they might not be 'worth the paper they are written on' (Hunt et al, 1999: p351 as cited by Harwin et al, 2019: p. 17). Whether parental compliance was what the local authority 'really' wanted (as opposed to separating the children from their parents) in bringing the care proceedings in Case A is unknown: Hunt (1998) argues that local authority goals are commonly unclear and fluid, that they emerge from the process. I note in other cases that parental non-compliance is a major factor in the proceedings being brought, a phenomenon identified previously by, for example, Bainham (2013).

[40] The following chapter looks in more detail at consensual and adversarial justice.

Notwithstanding the policy (Munro, 2011) and practice push to build trusting relationships between service user and social worker ('Reclaiming' as described by Goodman & Trowler, 2012) this can prove difficult to achieve. Such matters create dilemmas for MetroCourt: to what degree is it dealing with messes derived from the behaviours of the families that appear before it or messes derived from poor parent/social worker relationships? I think particularly of Case E where the local authority view of the sibling's capacity to care for the children went from negative to positive almost immediately upon a new social worker being allocated.

Child protection work with families that struggle and are prone to the periodic crisis is demanding (Freeman & Hunt, 1998). I can see how a little help is sometimes needed to reset the family and get some buy-in to a programme of work. Instigating care proceedings persuades some parents to provide better care (Masson et al, 2008). That is not the formal function of the family court, but it is what local authorities sometimes need it to provide. Interviewees know this and signal various (perverse) incentives for local authorities to submit s31 applications, irrespective of whether they actively seek to remove the child:

> *'The formality of the proceedings has a significant impact upon all of the parties, so I think what works well is having a judge who stands outside of the process, and comes to it with a measure of authority and respect by all parties. If it works properly, it can make parents realise this is quite serious for a start.' (J1)*

> *'Court really is a space for families to be heard. Often you get into these completely intractable arguments in child protection plans, even in pre-proceedings, and you just cannot move. You're stuck in your position they're stuck in their position. You know you're saying one thing they're saying another thing, nothing is changing and sometimes I'm like ''let's get this into court because at least they'll be represented and that will help so much''.' (SW3)*

> *'What the local authority really wants is for the court to take responsibility for the decision.' (L3)*

'(Parents think) right I really need to like make these changes now and really need to work with these services to keep my children in my care and make sure they are looked after as they should be.' (SW2)

So, courts sometimes serve as the forum for unsticking particularly obdurate disputes between the family and state and for containing professional anxiety. That assumed role is construed as mostly positive though some downsides are also raised: 'I feel like it's so oppressive and intrusive.' (SW2); 'there are too many children in care proceedings and a high number of them end with children placed with parents: it makes you wonder why we went in.' (SW1)

I wonder what the future holds for the family that features in Case A described above. I can imagine them doing well for a while. My worry is that they will wobble when old challenges resurface (acute mental illness) or new ones emerge (the adjustments that must be made in all families as children grow up). If they do find themselves back in court I can see how an accumulation of ineffective interventions might tip the balance towards removal of the children but equally I'm not persuaded that a third set of care proceedings will necessarily be more readily resolved than the two previous ones. More court time does not necessarily bring more clarity. The evidence may continue to point in two opposite directions. Moreover, children will have spent longer in their parents' care and it may prove harder to find a suitable alternative next time round (Masson et al, 2017; Brown & Ward, 2013).

Kinship care

The term kinship care (or variants such as family and friends care) is used to denote a member of the extended family or a friend who steps in to take care of the child when the parents are unable to. The importance of kinship care as a permanent solution in the eyes of the family court is reflected in the rise and proportion of special guardianship orders (SGOs) (Harwin et al, 2019).

'The child will benefit from having loving family members around.' These words, spoken by a judge in a hearing, explain why kinship care is one of the go-to solutions for the court. Where there is an existing relationship between child and prospective carer, and where it can be established that it is indeed loving and safe, one can readily see how, in the short-term, distress and disruption to the

child are mitigated and security provided by being cared for by familiar people in a familiar place. The benefits of the family placement may be all the greater where, as commonly happens in MetroCourt, there are specific cultural and religious needs. In the longer term the parent/child relationship is not permanently severed as it is with adoption. Children living in kinship placements are reported to have better outcomes than those in foster care (Sacker et al, 2021). Seeing the extended family as a potential resource has consequently become hard-wired into child protection and family justice systems. There are also legal imperatives to keep the child within the family where possible: both article 8 of the Human Rights Act (1998) and the Children Act 1989, s. 22C(7)(a) (see Pearce et al, 2011: p.52 for a fuller explanation).

A mechanism by which support is identified and employed is the Family Group Conference (FGC). In many cases that I observe reference is made to at least one FGC, sometimes as many as three, being held though the literature has found that FGCs do not take place, as a matter of course, before proceedings are brought (Masson et al, 2019). I note the kinship support taking various forms, principally temporary care (sometimes at very short notice), permanent care and informal supervision of contact arrangements. Most kinship carers in the sample are extended family, grandparents or aunts and uncles, but family friends feature too. In an ideal world the FGC takes place before proceedings, but urgent hearings can prevent this, as can kinship carers' worries that attending such a gathering might look like an act of betrayal or even hasten the care application. Parents, feeling ashamed and stigmatised (Freeman & Hunt; 1998; Hunt, 2010), may resist their families being contacted until the application is made. In one sad case the parents are unable to identify a single person who might help. In another the parents do not put anyone forward as potential carers which seems odd as they have named various family members to participate in an FGC and relatives briefly provided emergency care. There is ambiguity. Are they genuinely unable to propose alternative carers they can trust or are they 'gaming' the system, limiting the local authority and court to just two options: either return the children to our care or find long-term foster carers for four children with all their attendant complex needs?

The more common pattern is, however, of several people being identified and offering to provide support. This is gratifying but if long-term care is under consideration (which generally takes the form of special guardianship) the local authority is required to undertake viability assessments and, subject to those being positive, fuller assessments. I watch a grandmother who has joined the proceedings and wonder what sense she is making of extensive and arcane legal matters. While supporting the principle that such placements should be comprehensively assessed (I'm aware of kinship placements that have ended tragically) I also think of the massive investment of resources, local authority and family court, absorbed by these processes. I wonder – would the time and money be better spent keeping some of these cases out of court?

That kinship carers constitute a key part of the solution, a resource that needs to be harnessed (Care Crisis Review, 2018) is self-evident. However, there is also concern that they might inadvertently form part of the problem. Here are some examples:

Examples 5

A young man offers to provide care for his siblings following the incapacitation of both parents. This is a remarkably selfless act, heroic even, but hereby lies the problem in the eyes of the court. Has he fully thought through the implications? Will his social life, employment opportunities, marital prospects be impaired? Can his motivation be sustained over the decade or so it will take his siblings to become independent? Might resentment creep in? (Case E)

An emergency placement with family members fissures swiftly when the extent of the children's disturbance becomes apparent, causing them to be moved to foster care. (Case H)

Worries are articulated in court that family members may have divided loyalties. There is a disputed allegation that parents have persuaded kinship carers to let them make clandestine visits to the children. There are also concerns that the seriousness of incidents leading to the proceedings is not understood, that it is minimised in front of the children

who then feel under pressure to change their accounts of what has happened or what they now want. (Case C)

An aunt steps in at short notice and wishes to provide permanent care for the children. But little is known of her history and there are elements of her life that are unstable. More worrying to the court is the influence of a church that seems to be giving her poor advice and may even be seeking to exploit her. (Case J)

An uncle has been supporting contact but the local authority becomes worried that he 'may not fully understand the concerns' about the parents. And then he finds a job and, citing responsibilities to his own family, indicates that he can no longer continue to provide support. (Case A)

The role of the kinship carer may look superficially like one of the simpler elements of family justice to grasp. Closer inspection suggests, however, that the praise and encouragement given to them is blended with anxiety that the qualities that make them so appealing – a sense of duty, closeness to the parents – may cloud their judgement and paradoxically render them less suitable than a 'stranger' foster placement. Professionals worry that the commitments made by kinship carers will not be sustained when the challenges of caring for a child removed from parental care become apparent; or that difficulties in the carers' own lives will negatively impact on the care given to the child; or that they will unwittingly 'side' with parents, preventing the children from voicing their concerns or the local authority from adequately safeguarding the children. This latter concern is articulated by a children's guardian addressing the court direct: 'I need a clear understanding of how the family has received the allegations. Experience tells me family members can have little understanding of allegations. Can the children speak freely? Are the allegations taken seriously?' Conversely, placements with foster carers are described as 'neutral'. I also hear in interviews concerns that placements in families receive little attention once proceedings conclude:

'You know, there is nothing like the level of scrutiny, support and monitoring that is needed, which is almost always the problem with family placements.' (L3)

The function of the family court?

I return now to a matter I have alluded to several times in this chapter regarding the function of the family court. In so doing I note the reliance of over-burdened local authorities on the court, as evidenced by the substantial and sustained rise in public law applications to the court (see Chapter Three). I note also, however, various phenomena discussed in this chapter that suggest it is unrealistic to expect the court to make enduring decisions for so many families: cases that are more challenging and dynamic than they appear to be on first glance, difficulties in establishing the truth, families that return to court, administrative difficulties within the court, the problematic issue of permanence, mixed views about the role of the extended family. In short, and with reference to Complexity, both problems and solutions are commonly messy, as one might expect where there is a confluence of complex adaptive systems (CASs) (family justice, child protection, families) and emergent properties.

I wonder, therefore, whether the family court is always the optimal place and a care application invariably the right mechanism for resolving the kinds of problems faced by so many families. I am aided in my reflections by the following contribution made by a judge:

> *'I think that we have a lot of cases that don't need our expertise or our systems…that could be dealt without the need for, for example, a fact finding. So there's always the cases – a non-accidental injury where the parents deny causing it and there's reason to believe that they have. That will always require a court process because there will have to be formal hearing of evidence and findings of fact, and that's where we're needed. But some of the neglect balancing-the-risk cases they don't need the expertise that we have, and occasionally you find yourself doing those cases and thinking this isn't the best use of my skills and actually sometimes I don't have the right skills and you know a social worker, a properly engaged social worker would do this better. (J2)*

The judge is helpfully highlighting a problem caused by a wooliness of purpose. The formal role of the court in s31 applications is to determine (a) the facts and then (b) what order, if any, is to be made. In practice, in some MetroCourt cases

the informal role seems to be the provision of mediation between the family and local authority that are in dispute (which, incidentally, is precisely how an interviewee, SW3, defines most care proceedings). If, as the judge implies in the quotation above, the removal of the child from parental care is not realistically in play in some (neglect) cases then should we be better distinguishing between cases that require the input of a court and those that do not? Other interviewees express similar views to those of J2. Another judge (J1) says 'whether it is necessary for the court to solve the problems for so many families, or not solve the problems for them, I'm not sure.' 'Oh my God yes' is a lawyer's (L3) response to my question as to whether we have unrealistic expectations of what the family court can achieve.

Hedley (2014, p.4), a retired High Court judge reflecting on public law cases, suggested that 'most parents involved have more sad than bad about them'. The typology of sad, bad (and mad) has gone out of fashion in the world of child protection these days but he makes a valid point. It is rare to encounter carers who wilfully and systematically commit great harm to their child, notwithstanding the deaths of Arthur Labinjo-Hughes and Star Hobson in 2021 that reminded us that some carers are profoundly cruel and deceitful. The more common pattern is of parents who mean well, act warmly towards their children for the most part, do their best, scrape by in good times and struggle during bad. Some would be kept out of proceedings if provided with services suited to their complex needs, but our child welfare system leans towards protection and away from sustained support (Gilbert et al, 2011; Parton, 2014), austerity has pushed the pendulum further from prevention to statutory intervention (Masson, 2020) and the therapeutic value of pre-proceedings work tends to be diluted by the gathering of evidence (PLWG, 2019; Holt & Kelly, 2018). There isn't much by way of state provision to stop fragile families from crossing the permeable boundary between the child protection system and the family court, and what is offered to families may not be received as meeting their needs (Dale et al, 2005). I acknowledge the necessity of some public law applications but fear others are a symptom of welfare system insufficiencies.

The question as to the function of the family court – which families and problems is it meant to fix? – is not new. Over twenty years ago Hunt (1998) proposed that

many disputes between the local authority and family, presented to the family court as care order applications, might better be handled under a new kind of order (which she called a 'treatment and assessment order') and perhaps by a different, less legalistic, tribunal. Masson et al (2020a) proposed that the likely order at the end of proceedings should be considered before proceedings are brought. More recently Trowler[41] (2018, p.7) and MacAlister[42] (2021) argued that more should be done to keep borderline cases (those where there is not a clear imperative to remove children) out of court. Many voices have been raised in support of the idea that fewer family crises should be sent to the family court for want of other viable options, with more intensive input to prevent repeat proceedings or a tighter definition of what the modern family court is set up to do. Meanwhile, demand on the family court remains, to borrow an adjective used by the FJR (2011) regarding delay, at an unconscionable level.

Establishing which cases can be safely diverted would be tricky: distinctions between sad or bad and toxic or non-toxic are not readily made. Parental behaviours change, as do professionals' evaluations of risk. Gaining the cooperation of resistant, minimising, sometimes mendacious parents (Freeman & Hunt, 1998) without the authority, and implicit threat, of a court might be problematic. Also, I wonder whether there is the political will to drive change. Both Trowler and MacAlister are considerably closer to the levers of power than I am: perhaps they can persuade government to invest in services that are more receptive to families' complex and entrenched needs, and to do some blue-sky thinking about what the role of the family court should be and how to equip it to do that. As the latter (MacAlister, 2018: p.14) says: 'there is a limit to the progress that can be made without changes to the fundamental drivers and forces in the system…more systemic change will be needed, rather than making tweaks or piling more bricks onto an already wobbly and fragile Jenga tower.' That got a cheer from me and I fancy it might receive a polite round of applause in MetroCourt too.

[41] The government's Chief Social Worker for Children and Families.
[42] Chair of the government-commissioned Independent Review of Children's Social Care.

Summary

In this chapter I have revisited, from an empirical perspective, themes raised in Chapter 3. I have demonstrated the intrinsic complexity of the work of the family court in the public law domain derived from, inter alia, disputed histories, questions regarding the quality of support provided to the family, the manifold and persistent problems faced by many families that come before the court, and the dynamic properties of cases. In so doing, I identify a disparity between modernisation that holds that the majority of cases are straightforward enough to slot into a statutory timeframe, and practice which finds that the opposite holds true – most cases are complex and the 'bread-and-butter' cases are rare. I note a further disparity between expectations of proceedings to deliver permanence and the temporary nature of some solutions – a phenomenon that is, I argue, unsurprising given the emergent properties of families, particularly those that pass through the court given their manifold disadvantages and fragilities. I have investigated the role of kinship carers in providing temporary and/or permanent placements for children and shown how their input is welcomed for its capacity to offer love and stability. I have also revealed, however, that the involvement of kinship carers gives rise to professional concerns, including worries that kinship carers' loyalties to parents might lead them to prevent the child from voicing his/her wishes and feelings and the local authority from fulfilling its duty to protect. I have concluded the chapter by arguing that the function of the court is unclear in some care proceedings: is it, as formally set out, to make a binary decision to remove a child (or not), or is it sometimes to patch up differences between the local authority and family? The discrepancy between formal and informal accounts seems most marked in cases where there are long-standing social and health problems in families, and concomitant concerns about the care and development of children that become categorised as 'neglect cases'. These are issues I shall return to, and themes of messiness and ambiguity will run through the next chapter where I examine the character of the family court.

Chapter 6: Adversarial / Consensual Justice

Introduction

The focus now shifts from families to the nature of family justice, specifically adversarial and consensual aspects of public law cases. Research question 4 is thus addressed: what is the character of the family court; how do the categories of 'adversarial/inquisitorial justice' fit with the everyday practice of the court? To set this in context, family justice is, other than the Family Drug & Alcohol Court (FDAC), founded on the principles of adversarial justice (see Chapter 3 for a fuller discussion). This has been evidenced historically by, for example, the reliance on a judge to solve disputes between state and family, by parties' wishes being negotiated with other parties and presented to the court by lawyers, by the facts being established and by the testing of evidence through cross-examination. However, there is a school of thought, which includes a former President of the Family Division (President) (Munby, 2014), that some features of inquisitorial justice have been absorbed by the family court. Practice is better described, according to this school of thought, as hybrid, characterised by both adversarial and inquisitorial justice. Be that as it may, I note that family cases continue to be identified by the preposition 'versus', implying a contest between the local authority and the family. Whatever evolution has taken place the formal account – that is the face that the family court presents to the world through its setting, personnel, rules and language – leans substantially towards the adversarial.

This chapter considers whether practice in MetroCourt is congruent with this external presentation. Taking an ethnographic approach enables the dynamics of justice to be uncovered. There has been scant analysis of real-time family court cases, leaving questions of winning/losing or striking up agreements insufficiently interrogated or theorised. In this chapter, I demonstrate that in practice, family court cases evidence features of both adversarial and inquisitorial justice, but what is critical is how and why the balance of power shifts, together with what motivates consent and contest. Approaching ethnographic observation through the lens of Complexity brings the details of real-time practice into view, eliciting insights beyond the static categories of 'inquisitorial' or 'adversarial'.

In this chapter I show that in MetroCourt parents, the local authority and the court commonly have a stake in finding a consensual solution, not least because this is more palatable for all parties. However, disputes can break out at any moment, bringing unpredictability and instability. I argue that disputes may be strategic, designed to take the moral high ground or discredit the opponent and that neither accord nor disaccord may be quite as they seem. Thus, the observations shared in this chapter provide insights into the why and how of adversarial/consensual justice. They also evidence that neat descriptions of family justice as fitting this or that model are out of step with the unpredictable nature of practice, where power dynamics can radically shift across the course of a case, and not necessarily for reasons of children's best interests. Therefore, this chapter is also about messiness, but not that derived from efforts to tackle families' problems as discussed in the previous chapter. Rather, this time it concerns the messiness that comes from the tensions between seeking to win but also reach agreement, hidden motives, compromises, the variable competence of the local authority, worries that the child's welfare becomes subjugated to what is legally attainable, and the imbalance derived from one party being unrepresented.

The chapter starts, as did the previous one, with a scene-setting vignette. I then provide reflections about awkwardness, consider consent[43] from two perspectives (the parents' and the local authority's), adversarial matters and non-representation. The chapter ends with a discussion of children's and parents' rights in which I argue that the proposition, advanced by the Family Justice Review (FJR), that the former are subjugated to the latter is an over-simplification of a very complex issue with the rights and interests of the two parties being commonly entwined.

Vignette 2 (Case A)

Everybody other than the judge is in MS Teams waiting for the online case management hearing to start. Once it begins the social norms will be clear and, if necessary, enforced by the judge but for now there is a palpable sense of unease. Camera on/off? Greet/stay silent? Stare forward/look

[43] As previously indicated, consent is a word much used within the family court as a synonym for agreement.

away? My awkwardness is increased by recognising the children's guardian. We last spoke maybe three decades ago. It seems rude not to acknowledge this but wrong to do so. Then:

Clerk: who are we waiting for now?

(Unidentified) lawyer: the parents.

Voice (but no image): we're here.

(Brief pause, interrupted by the sound of an infant.)

Mother: cheeky bugger.

I'm heartened by the warmth in the mother's voice – thinking that there's something that a switched-on social worker could build on – and amused by the moment of levity before the formality starts. There will be plenty of 'my learned friend' and 'I'm very grateful to Your Honour' in the next hour.

The local authority has made the care application and so it is their lawyer who goes first. The advocates have met in advance and have a largely agreed position. The local authority does not seek removal of the children from the father at this hearing (the mother lives elsewhere currently and has contact with the children, but hopes to return home). The parents do not oppose the application for an interim supervision order today. The mother has expressed a preference for the psychiatrist who will assess her: both the local authority and children's guardian are content with that. There will be a parenting assessment conducted by the local authority family centre. The mother has dropped her application to be assessed by an independent social worker. Dates by which the various reports and results of tests will be filed have been agreed. There has been, I infer, an awful lot of hard graft behind the closed doors of the advocates' meeting(s), together with some serious horse-trading. You can have x if my client gets y. The principal trade-off is that the local authority gets an interim order that gives them a touch more clout, alongside parental sign-up to a safeguarding plan and various assessments while the father retains care of the children, at least for now. In this bargaining there's little doubt which party holds the face cards and which party is clutching the three and

four of clubs, but the parents do hold one high trump – the court will not lightly remove the children from their care provided they demonstrate that they understand professional concerns and that they will do all in their power to change their ways.

The mother's lawyer is at pains to stress this is the case. Her client accepts this, agrees to that, does not oppose, is following, has referred self and so on. The language of submission and the tacit contrition feel as important as the actions she has pledged to take. Exception is taken to the local authority criticising the mother for breaching the contact arrangements. The children were unwell – what else could a loving mother do but beat a path to be by their side to comfort them in their moment of need? The need to shift her contact out of the home and into a contact centre is disputed. It would, her lawyer submits, be unnecessary if only the local authority Were willing to put in a support worker.

The rhetoric is ramped up by the father's lawyer. His client is happy to be tested for drugs, fully endorses the local authority plan. The court can be assured about this and that. It is unfair to say the parents have breached the safeguarding plan. The social worker saw for herself how unwell the children were. It strikes me that there is a battle for the moral high ground going on, with the parents accused of causing significant harm to their children and the local authority in the dock for the crime of heartlessness.

Finally, it's the turn of the lawyer for the children's guardian who proposes that the impact on the children of mother's erratic behaviour will likely be better managed in a professionally supervised setting. The judge concurs. That's it for today and we'll reconvene in a few weeks.

Awkwardness

Normative social behaviour demands engagement with fellow humans – a quick word or a smile communicate our interest and openness. That rule is suspended when waiting for a hearing proper to start. Mostly we sit in silence and stare poker-faced into the camera. This is conduct which would generally convey antipathy or aggression. It is unsettling, even when I've grown accustomed to it. I wonder how alienating it might feel to the parent who is unfamiliar with the setting and

other actors, unversed in the unwritten rules and terrified by the thought of what may be about to happen. The occasional exchange between lawyers – first names followed by a request, for example, to ping over a document – implies they know each other, belong metaphorically to the same club from which the rest of us are excluded. I wonder whether that amplifies the gulf in status and the sense of belonging in this space between the legal professionals on the one side and the cheeky bugger's parents on the other.

It's a relief when the clerk cuts in to break the silence. When the judge joins and the hearing starts the mood changes abruptly, becoming more formal. Paradoxically, it also feels more relaxed as the exchanges serve to break the tension. The formality is integral to the family court. Before Covid-19 struck and courts went online it was expressed, inter alia, in the command to rise when the judge entered or left and in the raised platform on which the judge sits. In the remote court it manifests in many ways: the standard introduction comprising case number, name of family and local authority, injunction not to record; the established order in which advocates address the court; and by the arcane language. I'm on board with the principle of respect being shown to the authority of the court but find mildly absurd the stream of expressions of gratitude to it (as in the above vignette), particularly when these are proffered following the rejection of a lawyer's submission or following the judge's suggestion that the lawyer might want to be quiet. Just once I hear a judge burst the illusion of perpetual thankfulness with the rejoinder 'not a victory for you on that occasion'. It is unusual for anyone other than a lawyer to address the court directly but when They do there is a marked difference in language and tone – less obsequious, more down-to-earth. In one hearing a mother interrupts to say crossly three times 'the birth certificate is done'. She is not admonished for the breach of protocol, nor (I'm convinced) is the intervention held against her, but an exchange lasting a few seconds speaks volumes about class, education and social standing, and who belongs in which camp.

Justice by consent (the parents' perspective)

In the hearing described in vignette 2 the local authority and parents disagree on one matter only that requires a decision by the court there and then, that being

the location of contact between the children and mother. Where the children will live and under what order (probably for the duration of the proceedings unless there is a significant change in circumstances) have been negotiated and agreed between the parties in advance. Where contact takes place is important, hence the vigorous arguments of the parties and the care given by the judge to explaining his/her decision, but who will look after them has greater implications for the children's welfare and the family's future. Proposals for expert and in-house assessments have also been agreed, alongside dates by which reports can be filed and frequency of contact. Disputes over who should conduct assessments have been resolved. The lawyers have transformed what might have been a heated quarrel into an 'agreed package' (King & Trowell, 1992: p.99). Thus, provided the judge is content with what is proposed, the hearing can conclude within its allotted timescale and proceedings can move on in a way that is acceptable, if not completely satisfactory, to all.

Consensus is also to be found even where the local authority seeks to place the child with alternative carers at the first hearing. Here are two examples:

> *Examples 6*
>
> *At an urgent hearing both parents state their opposition to the children being temporarily removed from their care. Just three working days later, having taken legal advice, their position has changed to one of acceptance. The local authority has found a foster placement that is suitable in the eyes of the parents. At the next hearing the court is told that two expert assessments have been agreed. (Case H)*
>
> *The parents do not consent to the making of an interim care order but nor do they oppose it. Expert assessments are agreed as is the identity of family members to be assessed for their suitability as carers. (Case K)*

In an ethnographic study of the family court by Pearce et al (2011) the influence of the lawyer on parents is explicit, as it is in Bainham's (2013) account of his experiences as a family court barrister. These studies show how lawyers operate strategically, bargain, work out how best to influence the court and advise their clients accordingly. In the above examples it is implicit. Their lawyers advise the parents that the interim threshold is lower than the final threshold and hard to

contest. The opportunity to oppose the local authority application is a fundamental right and safeguard for the family against state power (Welbourne, 2016; King & Trowell, 1992). However, interviewees confirm that the local authority's submission that the interim threshold is met is rarely contested, particularly where the application relies on an accumulation of concerns rather than an incident:

> *'The way I've heard barristers sometimes talk is that in care cases the parents generally are dead in the water on threshold… where you would see the big factual disputes is if you saw a case where the only allegation of concern is, for example, that a parent or stepparent sexually assaulted a child or that a child had a spiral fracture of its humerus or a subdural hematoma. In those cases you see the adversarial system absolutely in full play. But generally parents will concede that threshold and so then it feels very consensual.' (J3)*

> *'If you have good legal advice and somebody doing proper drafting of your threshold document, in my opinion you could meet threshold on almost every case I've done in the last five years where a kid was on a protection plan.' (L3)*

So, particularly in those instances where the local authority is relying on proving neglect of the child resulting from parental behaviours, the parents' case tends to be weak at the early stages of proceedings but there are ways of strengthening it. The big goal is to keep the children in the family. The parents have little power so should be realistic, pick their fights, only engage in a battle that might plausibly be won. Getting into a scrap now risks reinforcing the local authority's argument that they don't grasp the harm done, are unmotivated to do better, do not deserve another shot. To show that they can care for the children they must acknowledge that they have fallen short, and show willing to make a better fist of parenting henceforth, as illustrated by these examples:

> *Examples 7*
>
> *A mother is 'very happy' to participate in the therapeutic programme for the family. The father has read the expert report. He 'fully supports its recommendations and will engage with such work and is keen to embark upon such work.'(Case C)*

'Mother understands there is no other immediate option. She very much wants to engage in the proceedings. She wants to engage in everything.' (Case G)

Parents are, I infer, steered towards agreeing, or not opposing, the interim threshold[44] and then represented as eager to embrace the opportunity to provide better care (which generally comprises some combination of assessment, therapy, signing up to a plan, monitoring etc.) This explains the lawyer's rhetoric in vignette 2. The father, it is submitted, is not just willing to accede to the drug testing, he is happy. To demonstrate his commitment, he doesn't merely agree to the safeguarding plan, he fully endorses it. My interpretation of these submissions is that the parents' lawyers are simultaneously signalling to the court the righteousness of their clients and modelling to parents the attitudes they should take with the local authority outside of the court arena. I have worked with enough families on the brink of, or in, the care system to know not to take the overblown language too literally. Most parents who find themselves in those circumstances feel deeply ambivalent. Hope is tempered by anxiety and resentment at the intrusions into their lives and the changes they are required to make. Many will have had mixed, if not negative, experiences of their encounters with professionals. Protestations of unbounded joy would give rise to suspicions of inauthenticity. The legal rhetoric is best taken then as a metaphor for contrition, seeing things differently, ceding to the higher authority of the court, trying to change. Biblical language is not used in the court yet dim memories dating back nearly six decades ago keep coming back to me – parables of sinning, repentance and seeking mercy. Saul on the road to Damascus, the prodigal son. Asking for forgiveness is powerful, potentially opening the door to reconciliation (Daicoff, 2013) – in this case between family and local authority.

Is the approach taken by parents' advocates effective? My intuition is that the grandiloquent language carries little weight, it being the advocate's role in an adversarial system to present their client in the most favourable light. Lilies are bound to get gilded. However, being overtly reasonable and compliant certainly

[44] From a legal perspective there is no distinction between agreeing and not opposing. However, the latter may be more palatable to parents worried about how their children may interpret their actions years later.

does no harm and may work in the favour of parents where the final determination hangs in the balance. Case H is a good example. Note the affirmation given to the parents by the judge following their decision not to oppose the local authority's application for an ICO:

> *Example 8 (a judge speaking)*
>
> *'I congratulate the parents on understanding that, if the children have to be separated from them, they do need first and foremost to be together. They recognise that the children's primary need is to be together, and I congratulate them on that even if it means a placement outside of the family.' (Case H)*

The following is an extract from my fieldnotes on the same case a couple of hearings later. As will become apparent, the parental responses to the application are not of themselves determinative but they seem to be acting in combination with other factors to set a course towards rehabilitation. A long game is being played and successfully so. As a secondary matter I draw attention to the power of reflexivity in ethnography: I pick up a change in tone which alerts me to the likely shift in direction of the case:

> *Example 9 (extract from my fieldnotes)*
>
> *The signs are that the children will be returned to their care on the conclusion of the proceedings, the remaining issue then being on what order. I'd bet on a supervision order. What are the indications? The lack of contest over the threshold thus far. The compliance of the parents. The push to increase contact and the judge's nudge in that direction. The high degree of consensus in the hearing. The children (reportedly) saying they want to go home. And the feeling that the sting has gone out of the case. The first two hearings were dramatic, challenging, dynamic. This one felt rather flat as if all the energy has gone. It feels like we're pottering towards a restoration of the original order but with the parents having duly repented, agreed to modify their parenting and to accept state oversight into their lives. (Case H)*

In some cases, parents' lawyers stressed how eager their clients were to support the local authority and court in promoting the child's welfare:

> *Examples 10*
>
> *A child is placed with foster parents who are from a different culture and religion. The parents offer to meet with the foster carers to help them understand how they might better meet the boy's needs. (Case C)*
>
> *'My client (a mother who does not live with the child) is providing cooked food. She is willing to meet with the local authority to see what help she can give.' (Case D)*
>
> *'Mother's first position is that children should live with their brother. She will provide emotional and practical support. She will make herself available to sign the support plan.' (Case E)*

How should we understand the offers to provide practical and emotional assistance? Are they cynical tactics or a genuine desire to help? The court seems to take them at face value as would I (at least initially) if I were still in practice. Most parents drawn into care proceedings do want the best for their children even if they fall short. Mornington & Guyard-Nedelec (2019) stress the importance of the court seeing parents as a solution as well as a 'problem'. Selwyn (2010) points out that some parents mature and will provide a home for their child, if not now then in the future. Keeping the parent and child connected is crucial for sustaining their relationship in the long-term whatever shape that takes and may help to strengthen temporary arrangements. The local authority and parents working harmoniously in the child's interests is plainly positive. We should assume then that motives are honourable unless there is evidence to the contrary. However, it's also a good move. It cannot damage a parent's standing to be seen to help, nor to bring the court's attention to the imperfect arrangements made by the local authority.

Justice by consent (the local authority's perspective)

The power dynamics of the court are curious. Everything appears to be in the local authority's favour. They have the capacity to prepare their case thoroughly in advance of proceedings whereas the parents will have had, at best, a brief

consultation with a lawyer during pre-proceedings[45]. The local authority has experience of the family court. The interim threshold is set low (Bainham, 2013). Parents are stressed, multiply disadvantaged (Care Crisis Review, 2018) and advised to comply with the local authority.

Watching the cases progress I discern in some a subtle shift in the balance of power, the pendulum swinging away from the local authority and towards the parents. Children return to the care of their parents, applications for care orders conclude with supervision orders, a dispute over when a child should go home is resolved by the local authority acceding to the parents' timeframe, the local authority does not argue against the request to appoint experts. The local authority seems sometimes to be every bit as keen to settle by consent at the latter stages of the case as many parents were at the beginning. I am puzzled by this, unsure whether it is worthy of a term such as 'trend' or a symptom of a small sample, doubtful as to whether I should read anything into it. I ask interviewees. None of the social workers I speak to take exception to my hypothesis: on the contrary they swiftly agree and put forward several explanations

> *'We're too quick to ask legal for a view…a lot relates to social worker lack of confidence.' (SW1)*
>
> *'We just capitulate. We actually will go to contested final hearings more than other authorities because I have an amazing service manager who's just like ''do not give in'' and so I've had arguments with my barrister who's saying ''you're not going to win this''. But the little ones you know, the less kind of spicy cases, we will often agree to a bloody supervision order, which isn't worth the paper it's written on because basically, we're being told ''you're not going to get your care plan. You're not going to get removal. What's the point in fighting it?'' ' (SW3)*
>
> *'We often feel very pushed to agree, to say that we have no case. Obviously that must be similar to what parents might be experiencing. You also get the thing where the judge makes their view quite clear before the final hearing even happens and then it's just sort of decided that we won't*

[45] A disadvantage that is, I expect, amplified by the rise in urgent applications as noted by the PLWG (2019).

pursue our initial plans. It's really frustrating, especially when one judge just basically said ''whatever happens, I'm going to grant a supervision order.'' ' (SW2)

'We have such crap legal representation, it's so bad, and so our bundles are never in on time. They can't use the online bundle system. So, our bundles are missing key documents. It makes us look completely inept, but it has nothing to do with us, it's legal.' (SW3)

Dissatisfaction with their legal support, administrative failings, a perception that the case trajectory is towards rehabilitation, their own diffidence in the face of confident lawyers, the equivocal nature of the evidence – these factors combine to leave local authority social workers feeling impotent in the face of a tide that they believe has turned against them. There is a palpable unease that legal opinion regarding what is attainable takes precedence over children's interests (King & Trowell, 1992). Interviews with other disciplines echo some of these concerns. Two lawyers lament a drop in the quality of legal representation across the board. 'A lot of parents are represented by unqualified lawyers, they give it to the trainee, it's really shocking' says L1. 'The standard of legal representation of parents in care proceedings has declined' says L3, attributing this to legal aid cuts that have led to the closure of specialist firms or an inability to devote the time required to handle care cases (a view also expressed by Masson, 2020). A social work team manager's (SW3) description of a staff member's terror of giving evidence (and concomitant enthusiasm to settle) is mirrored by a lawyer's (L3) resolve to keep parents out of the witness box as 'it will damage their case'. Two lawyers (L1 and L2) assert that the outcome of cases is largely determined early in many proceedings, as asserted by Hunt (2010), particularly where the child is removed at the interim stage. There is also sympathy for social workers, perhaps even a note of regret that justice might be better served if they were able to assert themselves more:

'Social workers have seen themselves knocked about time and time again – well, why didn't you do this for the parents? Why didn't you do that? – criticisms that are justified or not. They see themselves as undervalued and not accepted and not believed.' (J1)

Self-evidently, there will be cases which start with the local authority and family in dispute and end with them holding a genuinely shared view as to the outcome, whether that is reunification, kinship care, adoption or other. On the back of what I've seen and heard I think there are others where apparent concurrence masks feeling of powerlessness, a reluctance to engage in battles that are likely to be lost and misgivings regarding the outcome. Two interviewees articulate this clearly:

> *'It's not a consensus, there is almost always a more dominant legal party.' (SW3)*

> *'What you're seeing is a lot of soggy consensus that's not based on any reasoned, analytical, well-informed analysis of the family and prognosis. It's just a kind of well, it's not great, but you know it will do.' (L3)*

Soggy consensus: a snappy phrase that speaks volumes about parties wanting to find a solution in an imperfect system, however much it sticks in the craw. It's an idea too good to let pass without further comment but it's time to pause and look at the family court in adversarial mode.

Adversarial justice

In vignette 2 the local authority submits that the mother has breached the safeguarding agreement by visiting the children in the family home outside of the agreed contact times. One of the parental responses is to try to get off on a technicality – yes, the mother visited but it did not breach the agreement (presumably because the latter didn't precisely spell out the rules to be observed in every eventuality). It sounds to me like a feeble argument. The other response is to turn the tables on the local authority social workers. They do not understand what it feels like to be apart from children who are sick. They saw it with their own eyes and still don't get it. They lack compassion, cannot bring themselves to see the good in my client. It's hard for the local authority to defend itself against this charge. There is an inherent tension in its role between prosecuting the case and working in partnership with the parents (Beckett et al, 2006). Succeeding at the former necessitates putting nuance and uncertainty to one side in the court arena. It finds itself set against the parents (Welbourne, 2016) and is vulnerable to the accusation that it is unsympathetic to a mother who is struggling in extremely

challenging circumstances. It presents the parents' lawyers with opportunities to chip away at their moral authority and competence. Here are other examples:

Examples 11

'You'll have read of difficulties in the previous placement. Mother's concerns were investigated and deemed to be founded. They were validly held. It is unfortunate the local authority has not acknowledged this.' (Case K)

'The parents were not invited to the last two looked after children reviews and were not invited to contribute ahead of the reviews.' (Case C)

'The local authority wishes to do a risk assessment. It has known father has been part of these proceedings for two weeks and father queries where a risk assessment takes us.' (Case K)

For the most part criticism of the local authority is, as in these examples, restrained and polite. Very occasionally there is an assault:

Example 12[46]

It begins with a spat around contact involving contact of children and parents with the local authority described by one of the parent's lawyers as having a 'cavalier attitude' to this. The local authority cites in its defence the unfortunate impact of the pandemic, the children's guardian is sympathetic to this explanation, suggests they've done their best in difficult circumstances, the parents' lawyers express some mild scepticism but there is enough ambiguity regarding why contact has not happened to prevent trenchant criticism. However, contact has still not taken place by the next hearing in contravention of the court order. The children's guardian is reluctant to condemn the local authority – 'it is correct that virtual contact has not happened, but these are difficult times.' *The parents' lawyers seize the initiative. 'The local authority has ignored the recitals of the court order, it is for the court to decide on contact… it should not be difficult for the local authority to organise transport... my client has*

[46] In this example I have conflated submissions made by both parents' lawyers.

had no virtual contact since (date), it is shocking. As recently as (date) the local authority was still taking instructions on remote contact. It still hasn't happened eight weeks later. It beggars belief…there have been flagrant breaches of the order.' It is clear as day that the parents are on the right side of the argument at this point and the local authority on the wrong. The floodgates open, just about every element of the local authority's conduct is mauled. '*The local authority had to be chased by my solicitor…there is no good reason why (the child) did not go to live with (kinship carer). Your Honour had pointed out that (kinship carer) met (the child's) needs and they were likely to get comfort from the family… the local authority won't be able to provide an interim report until (date). Their position statement does not justify their lack of response…copies of all correspondence between the local authority and experts should have been shared with all parties. It has taken eight separate emails to local authority lawyers chasing them for these... there has been a paucity of review. The court ordered the local authority to review. They did not do it properly or in time… Your Honour will be told by the local authority that there is a new piece of information just round the corner, but the children's needs have not been met.' (Case C)*

If this was a boxing match the referee would have ended the contest a while ago. The initial opacity regarding why contact has not taken place has cleared somewhat by the second hearing described in example 12, the court having explicitly ordered face-to-face and indirect contact, neither having taken place and the impact of Covid-19 on contact facilities having diminished. The local authority has, in my estimation, shot itself in one foot by failing to comply with the court order for contact and then shot itself in the other through poor communication, half-heartedly undertaking tasks they had previously committed to and missing deadlines. The social work team and legal function of the local authority appear to be relying on snatched conversations with each other just before the hearing. Nobody seems to be driving the case forward. The local authority has thus ceded the moral and legal high ground to the parents whose lawyers exploit this to the full. That is one of their jobs within an adversarial system and the hearing above can be taken as an example of the system working

well to provide checks and balances to the misuse of power, particularly considering the children's guardian's apparent passivity. Interviewees identify parents being given a voice, and a more level playing field or 'equality of arms' (Welbourne, 2016: p. 207) being created as positive aspects of adversarial justice, for example:

> *'I think it works well that parents are represented and they have someone that is able to put their view across because I think that can be quite a struggle when they're on their own within, like a child protection process, and when they're trying to like understand all the systems and feeling like everyone's raising concerns, but they're not then able to respond in a way that maybe they would want to or feel able to, and so I think that it can be really helpful for them to feel that they have their views represented by someone that's trained. (SW2)*

As for the hearing described in example 12, in our post-hearing discussion, mindful that the judge has criticised the local authority in court, I feel free to say what I'm thinking. 'Will the local authority get its act together?' I ask rhetorically. The judge's facial expression does not convey optimism.

The wise local authority demonstrates competence and respect to families and the court. 'The local authority has moved swiftly to provide support for the children' says their lawyer in one case, pre-empting criticism by citing a lengthy list of actions taken, plans made, matters to be determined, dates. In another case the visit to the family home by the social worker to go through the court papers with the (possibly learning disabled) mother is set out. The impression I gain, which the court seems to share, is of authority being balanced with compassion and of cracking on with the job in hand. Giving insufficient attention to these matters has negative consequences for the local authority: its reputation is traduced; it finds itself pushed onto the defensive; its energy and resources are diverted into making up lost ground. Moreover, court time is invested in adjudicating on fights between parties that might have been prevented. 'Front-loading' was a phrase much used in family justice during the 2010s, including the Public Law Outline (PLO), to indicate the ploughing of resources into the early stages of cases to get on top of things, be better prepared to deal with the

unexpected, save time down the line. It's an idea that still has merit. It pays dividends to show the court you are on it. The challenge the local authority faces, particularly when a child is subject to an interim care order giving that authority shared parental responsibility, is that it has many matters to attend to – placements, contact, education, assessments among others – and is almost bound to get something wrong. As the children's guardian I interview puts it: 'I learned very early on, don't bother criticising. You could spend all day criticising them. It's like shooting fish in a barrel.' The court, in adversarial mode, is the place where wrongs are righted, but it can also be a very unforgiving environment for the beleaguered local authority.

Before leaving the matter of adversarial justice I want to cite one more example derived from a parental application to discharge the care order under s39 of the Children Act (1989). The remarkable aspect of this dispute was that it had no direct connection whatsoever to the welfare of the child. On welfare matters the hearing starts with father's lawyer saying 'there is no dispute as to the way forward'. Father will undertake hair strand testing, he will refer himself to services for perpetrators of domestic abuse, a culturally appropriate independent social worker has been identified, weekly contact has been established. Then comes the spanner in the works. The family cannot afford to pay a lawyer. Funding in s39 cases is not automatic but is subject to a means and merits test conducted by the Legal Aid Agency (LAA[47]), a body identified by the Public Law Working Group (PLWG) (2021: p.67) as having had an adverse impact on the efficient administration and fair disposal of family cases. Waiting for a LAA decision will bring delay and the full costs of the expert assessment will, it is confidently predicted in court, not be agreed. The solution is simple, say the parents and children's guardian – the local authority should pay. Whoa, says the local authority – it's not our application. The judge agrees and orders costs shared with the local authority meeting any shortfall. The dispute does not last long, maybe ten minutes in the hearing. It doesn't sound much but it's ten minutes of the time of a judge, four lawyers, a children's guardian, social workers, and the court clerk. On top of this there is whatever time was spent in lawyer/client discussions, advocates' meetings, preparing documentation, applying to the LAA and chasing

[47] An explanation of the rules relating to legal aid is set out later in the chapter.

after them for a reply. Every penny of that is probably funded, one way or another, from the public purse, and every second represents time taken from overworked child protection and family justice systems. There is absolutely nothing anybody involved in the case can do to change this, they are unwittingly dragged into a dispute that nobody wants or gains from. ‘This seems to be a false economy’ I write in my notes, a conclusion that several months later reads like an understatement.

A hybrid system?

I concur with Munby’s (2014) claim that family justice has evolved into a hybrid system, combining two apparently opposing urges – one to agree, the other to oppose. And yet I’m left thinking that to refer to practice in MetroCourt as a hybrid and leave it at that doesn’t do full justice to the intricacies. As we learn from Complexity, practice does not necessarily fit neatly into formal categories. For one thing, neither the consensual nor adversarial elements of justice are quite what they seem. Consents may be the product of genuine accords, but they may also be soggy, born of the shifting dynamics of power, reluctant concessions and anxieties about getting a bloody nose in court. There is nothing intrinsically wrong with compromising – in fact I’d turn the issue on its head and defy anyone to carve out a career in child protection without having recourse to it – but I’m uncomfortable about the implications after proceedings end. How signed up – really signed up – are the parties? Is there residual dissatisfaction and resentment? Is the deal flimsy? If so, does that contribute in any way to the previously noted impermanence of solutions? The literature (Freeman & Hunt, 1998; Hunt, 2010; Maclean et al, 2015) suggests that many parents harbour bad feelings and the conflict rarely ends when the court’s work is done. As we’ll see towards the end of the chapter, they are not alone in feeling aggrieved.

As for adversarial aspects of justice, the importance of a passionate and coherent argument was apparent when crucial issues pertaining to child welfare were at stake, such as the contact between child and parents. Notwithstanding my wincing at the onslaught directed to the local authority quoted above I thought that I might be watching adversarial justice at its finest. However, I also frequently felt that the disputes were strategic, designed to facilitate the long-term goal,

generally that of retaining/resuming care of the children. One eye was on the present conflict, the other firmly cast towards the court's final order. The moral standing and competence of the local authority were questioned in the hope that the court would lose faith in its ability to provide a better future for the child than the parents would supply. The lawyers' outrage felt a touch manufactured, the scraps a bit calculated.

Secondly, the balance between the consensual and adversarial is unstable and unpredictable but the primary impulse of many cases is, by my estimation, towards consent: a claim also made by King & Trowell (1992). I saw a couple of contested interim care orders, no finding of fact hearings and no contested final hearings. Every hearing was conducted via lawyers' submissions: there was no trial involving people going into the witness box and having their evidence cross-examined. This may be a consequence of a small sample, but the literature (Hunt, 2010) suggests that many cases conclude without recourse to a contested final hearing. To collapse myriad complex interactions involving all of the actors down to a sentence risks over-simplification but I discerned a pattern: parents were dissuaded from fighting a battle they were unlikely to win; their contrition and willingness to change were hyped up by lawyers but the possibility that the parents meant it could not be ruled out; the local authority was then obliged to follow suit by compromising and demonstrating its openness to forming a different view of the parents; approval was given by children's guardians and judges. Thus, a course might be set for the case, not cast in tablets of stone, but rather a rough template around which the various parties might coalesce in the months ahead.

Where has the collective impulse to find consent sprung from? No higher authority – law, policy, President – has decreed that this is the way public law cases should be undertaken. I take it then that it has come from within, formed by the constant interactions and communications of the actors, adapting to the complexities they face and thereby creating policy upstream. This is, of course, the language of Complexity as set out extensively in earlier chapters, a core precept of which is that unpredictable phenomena will emerge semi-spontaneously from social systems. Complexity directs us to consider the influence exerted by environmental factors as well as internal dynamics. In the case of family justice the key environmental influence is unrelenting pressure –

increased demand, static resources, the significant disruption caused by Covid-19, backlogs. It does not have the resources to arbitrate on too many disputes between the parties. If battle was joined, as in a couple of examples above, in every hearing family justice might buckle under the weight. A high level of consensus matters if family justice is to direct its meagre resources to arbitrating on the matters which lawyers are unable to thrash out.

Consent is therefore functional to family justice, permitting it to protect itself and the vulnerable people who appear before it. Nowhere does this become clearer than in these examples:

> *Examples 12*
>
> *The issue under discussion is the impact on the family court of the father's criminal trial. The local authority lawyer submits that, given the date of the criminal trial and the child's age, the court will need to consider holding a finding of fact hearing ahead of the trial. The judge responds as follows: 'looking at my timetable I have a 19-day case in my diary for (four months hence). It may not proceed. I can make time in (five months hence) but it will be very tight. I would need to make time available. If we have a finding of fact it means running issues in my court ahead of the criminal court*.' *(Case J)*
>
> *The discussion concerns the reunification plan for the mother, all matters being agreed other than the date of her reintroduction into the family. The judge speaks: ' why don't I clarify what I'm thinking? I don't have a four-day slot until (nine months hence). I'm moving some of my cases around so a slot may become available, but it is unlikely to be before (four months hence). Moreover, I'd take some persuading to allocate four days to this case as there is some scope for agreement and some aspects of the plan need further work to reach agreement.' (Case A)*

Most hearings last an hour or less. The occasional one stretches to two hours. The exceptions to this norm are finding of fact hearings and contested final hearings. In the first example above the hearing that may be vacated is listed for 19 days (so probably a combined finding of fact and final hearing). I note seven days being set aside for a final hearing in another case. In the second example

four days will be needed to determine one complex contested matter. This is time that the court can ill afford. The proceedings are going to be extensively delayed if contested hearings are listed for the simple reason that there is no room in the calendar to accommodate them. As is acknowledged by the court the issue in dispute may have become redundant by the time a contested hearing is held. The judge's reticence to allocate four days of court time is understandable, and the lawyers are strongly urged to gather again and hammer out a deal.

Non-representation

Adversarial court systems are predicated on the principle of 'equality of arms' (Welbourne, 2016: p.209). It follows that the person who is unrepresented is at risk of being disadvantaged as there is nobody to advise them, nor advocate on their behalf before the court. In s31 care cases children are automatically made parties, a children's guardian is then appointed who in turn appoints a solicitor. Parents are entitled to non-means tested legal aid provided they have parental responsibility. Others who become involved in the case, kinship carers for example, are subject to a means (disposable income) and merits (likelihood of success) test. This test is applied to other public law applications, such as s39 (Children Act 1989) discharge of care order applications in respect of which parents do not automatically receive legal aid (see Osborne, undated, for a fuller explanation).

There are two principal matters to be addressed in this section. The first relates to those people who, in line with the legislation, were not automatically entitled to legal aid, the pertinent questions being the implications of this for justice and how the court responded. The second relates to those who were entitled to automatic legal aid but who found themselves unrepresented or facing barriers to their representation. For this group there is an additional question as to how their lack of representation came about.

This is an example from the first group (not automatically entitled to legal aid):

> *Example 13*
>
> *An application to discharge a care order. A lawyer addresses the court: 'mother appears in person…there is a duty guardian. Unfortunately, the*

circumstances are that the hearing is too early…the lawyer for the duty guardian is in an impossible position as there is no funding for the child and her funding will need to be means tested…what we really need is a case management hearing in two to three weeks' time. The child will hopefully be funded, the previous children's guardian will hopefully be available.' The judge agrees there should be an adjournment. As mother is unrepresented there follows an exchange between the judge and mother:

Judge: 'you have the right to address me directly. Is there anything you'd like to say to me particularly whether I should adjourn?'

Mother: 'I need to get (child) back as soon as possible. I haven't seen her for so long, the social worker hasn't replied to me, even her manager is in a meeting. I want to know if she can come home soon.'

Judge: 'I'm going to ask you to put down your views in writing in a witness statement and set out what it is that you want the court to do.'

There is a discussion of what documents should be disclosed from the previous proceedings into these. The judge asks mother whether she is happy for lawyers to meet and decide what documents should be produced. The mother's reply is almost verbatim the same as her previous one: she hasn't seen the child in months, she needs to come home as soon as possible, the local authority is at fault. (Case B)

This is a graphic example of policymaking tripping itself up. One thrust of family justice policy set out in modernisation is to make courts more efficient, protect the public purse and bring about speedier decision-making for children. The public purse is also protected through a second mechanism, namely the vetting of applications for funding by the LAA. There is a degree of overlap in the aims, but the second arm of policy undermines the first by holding up proceedings. The following comment from a lawyer in a different case – 'Your Honour will have seen from position statements that legal aid has only just been granted following loads of pressure. It was only pointing out that a hearing was imminent that led to a positive response' – is one of several I hear suggesting that the LAA moves at a pace that is utterly at odds with that required by the family court. The

consequences are delay, a largely wasted hearing and no representation for the child or mother. Setting the date for the next hearing is a lottery as everybody is second-guessing when the LAA might provide an answer. An advocates' meeting will, I expect, have been thinly attended and unable to make progress. The frustration in the court is palpable. The child's lawyer is present in court and does speak briefly (I infer the lawyer is either working pro bono, as happens in a couple of cases, or with fingers crossed that funding will be approved and paid retrospectively: otherwise, the child would have been unrepresented.) The mother has no lawyer, and the judge is obliged to consult her on matters that are put to others in the interests of balance. However, the mother has understandably no grasp of esoteric case management matters such as adjournment or the disclosure of documentation and answers two completely different questions from those posed by the court. It must be a stressful experience for her, as it is for the kinship carer in another case who bursts into tears or the father in a s34 contact application who says 'I have no money for a solicitor. I need legal aid.'

This is an example from the second group (entitled to legal aid but unrepresented):

> *Example 14*
>
> *An urgent interim care order application on children who have been removed from parental care under powers of police protection, those powers being about to expire. The judge wants to know why the parents are not present and unrepresented, asks twice how much notice they have had, says that s/he is 'unhappy at the lack of legal representation' and that this has been caused by the local authority issuing their application 'far too late'. The interpreter calls the parents, reports that 'father is on the phone call and mother is sitting with him. They are on the way to see a lawyer, currently they are at (train) station.' (Case H)*

Urgent applications (technically in this case a same-day application) are on the increase (Pattinson et al, 2021) and problematic. At stake, in this instance, is one of the most draconian interventions of the state in family life. Yet there is a disturbing power imbalance. On one side is the local authority represented and prepared. On the other are parents unrepresented, at a busy train station (so

unlikely to hear clearly), reliant on an interpreter to explain unfamiliar and complicated legal matters to them, struggling to give voice to their views. The most poignant moment is the parents saying they need half an hour to get to their lawyer and the judge explaining that the lawyer will require time to read the papers and take instruction, and in any case the parents will need separate representation. The entire incident is reminiscent of accounts in the Nuffield Family Justice Observatory (NFJO) rapid review (Ryan et al, 2020a) of parents being unable to participate properly in hearings, albeit in this instance the barrier to participation is caused by a late application. The judge orders another hearing in a few days to give the parents the opportunity to obtain legal advice. But it's a disturbing watch notwithstanding the sensitivity shown to the parents and the substantial efforts of the court to include them. I hear of a similar situation that occurs in a different case in which the father is absent and the mother unrepresented. An interim care order is made. This too is, given the circumstances, as close to a pre-determined outcome as one will see in a family court, but the court is uneasy about it and the situation is exacerbated by a delay of 12 weeks in relisting the case.

Finally, there are instances of fathers being represented but prevented from taking part in the proceedings. A hearing (Case G) starts a few minutes late. Father's lawyer explains why: 'I've only had ten minutes with father thanks to the generosity of the court. It was agreed by the prison that they would produce father at 1pm but it was 1.45. I was told that's when the staff have their lunch break. Currently he's in X prison but will be moved. I can foresee booking a visit at X only to find he's moved. The hope is that the family will tell us he's moved.' A couple of days later there is a similar incident in a different case (Case J) whereby a prison does not comply with an order to produce a father for an online hearing As explained, with accompaniment of head shaking, thus by the judge: 'I've been told we made the order too early, how that was I don't know, I shall be making a complaint.' Later s/he speculates to me that the family court hearing was probably in the prison diary but got deleted when a crown court hearing came up.

We'll produce the prisoner when it suits us. Your timeframes are your problem. You want to know if a prisoner's been moved, ask his mum. Passive aggression

from another arm of the justice system – just what the family court needs right now.

'We are working to a Parent Act rather than the Children Act'[48]

Don't be taken in by the flattery. Local authority lawyers, steeped in the etiquette of the family court, are at pains to voice their thankfulness to it. Their social work colleagues are deeply ambivalent. They need the court to sanction their authority's applications and plans but are resentful when the court challenges these and, as they see it, gives more weight to parents' rights than they do to children. They are not alone in holding such views. The FJR (2011b: p.14) agreed with submissions made to it that 'the right of the parents to a fair hearing has come too often to override the paramount welfare of the child' and sought to push the pendulum the other way. However, case law has insisted that a full analysis of viable options should be put before the court, and that the court should scrutinise these (see Masson, 2017 for an explanation of how Re B-S [2013] EWCA Civ 1146 became so influential), a signal that the judiciary was not lightly going to downgrade parents' rights to a fair trial or the child's right to family life, set out in Articles 6 and 8 respectively of the Human Rights Act (1998). Legislation and case law are tugging in different directions but in the clash of competing ideologies – intra- or extra-familial – case law is deemed to have carried more weight than formal policy (Masson, 2018) and there is a discernible tilt towards giving the intra-familial a shot.

The quotation above that forms the heading is not a maverick social worker expressing an unorthodox opinion. I have heard the same view articulated countless times in one form or another: courts do not listen to us, parents are given chance after chance, children's needs get side-lined. The rancour is understandable – statutory social work is extraordinarily stressful, media coverage is hostile, inspections are picky and critical, and then courts scrutinise their work, demanding to know what opportunities have been given to the parents to tackle their problems – but does it have any rational basis? Is the family court working to a parent act?

[48] A social worker's view quoted in Trowler (2018: p.6).

I noted above that there is an impulse towards consensus in cases, commonly formed quite early in proceedings. That impulse is not always towards reunification – it varies from case to case – but in borderline cases[49] the consensus is likely to form around attempting to keep the child in the family, with parents the first option and extended family the fall-back. I do not see local authorities arguing in court that parents should not be given a chance within proceedings to demonstrate that they can change. We should remember – see previous chapter – that local authority aims in care proceedings are often fluid. It doesn't seem fair to blame the court for not giving them what they want if they're unclear themselves, if, as a social work interviewee (SW1) put it, proceedings are 'a look-see'. And the local authority is caught in a bind: it must both protect the child and support the family. It must also, through the efforts of the social workers it employs, try to sustain a working relationship with the family long after the proceedings end. Thus, its legal representative is most unlikely to submit to the judge that the parents are hopeless, the case is a no-brainer and frankly we could wrap this up pronto – even if that's what his/her social work colleagues are thinking. There seems to be a curious symmetry at work. To prove they are worthy of caring for the child the parents must declare themselves hitherto unworthy. To prove they are worthy of caring for the child the local authority must declare that parents they have deemed unworthy may be worthy after all. Eat your heart out Joseph Heller.

The presumption behind the complaint that parents are favoured over children seems to me predicated on a false premise, that parental/child needs are necessarily distinct and in opposition to each other. Such a formulation is commonly referred to as zero-sum, indicating that what is gained by one party is lost by another. Here's a different perspective, taken from my interview with a judge:

> *Researcher: It's very easy to talk about parents' rights and children's rights as if they're completely discrete but so often it seems to me, in the cases I've watched, that the two are intertwined. Is that right?*

[49] As defined in the previous chapter, cases where there is not a clear imperative to remove children.

Judge: Yeah absolutely. I mean there's the right to respect for family life. They mirror each other. The child has a right, respect for family life is a right to be connected to that person and the parents likewise. So they are completely intertwined. And actually, there's an argument that if you don't respect the parents' right to family life then you are not properly maintaining the paramountcy of the child's welfare. (J1)

So, the consensual nature of many proceedings, case law and beliefs that downgrading parents' rights works against the best interests of children combine to thwart a core purpose of modernisation. Does that mean then that children's welfare is compromised? Children returned to parental care have higher rates of breakdown (Masson et al, 2018) and of further maltreatment (Lutman & Farmer, 2013) than children placed elsewhere. This knowledge may be of limited assistance to a court determining what should happen to *this* child of *these* parents at *this* moment in time (Dickens et al, 2019; Robertson & Broadhurst, 2019; Broadhurst & Williams, 2019). Further, outcomes for children who are looked after are not universally good: bonds to people they care for are weakened, education and friendships are disturbed, many will not have a carer who will see them through their childhood and beyond (MacAlister, 2021). Most looked after children retain contact with their family or return to the parental home on leaving care (Wade, 2008; Lindley,1999). Assessing parents, and trying to help them, isn't done in the spirit of the child's needs can go hang: it's done with the purpose of testing whether their children can have both a family life and be kept safe. Doing so will work against some children's interests in the fulness of time but it will work for others.

If accusing the court of working to a parent act is an angry way of saying that family court practice has diverged from the vision of the FJR (2011) then that is clearly true of MetroCourt. If it is meant more literally, as in parents' rights are trumping all else and children are invariably losing out, then it's inaccurate. There is no definitive right balance of children's rights and parents' interests. It is an inherent tension that is not amenable to being fixed by legislation. If an ethnographer pops their head round the door of MetroCourt in ten years I expect they'll find the tension has not gone away, though the forces that push it this way and that will have shifted. The culture – the ways the various actors interact to

create normative responses to the dilemma – will have changed too. That's what happens in complex adaptive systems trying to resolve wicked problems.

Summary

I have, in this chapter, dug beneath the surface of family justice's representation as a hybrid (Munby, 2014) noting sudden switches between adversarial and consensual modes, shifts in the balance of power, and hidden motives. In so doing I have demonstrated the power of ethnography. Would such granular detail be achievable through file review or interviews alone? I doubt it. I have argued that neither contest nor consent are always as they might superficially appear, the former being sometimes aimed at undermining the moral authority of the 'opposition', and the latter a collective drive to find a solution acceptable to all, even if that falls short of what any party considers best for the child – a phenomenon referred to memorably by an interviewee as a soggy consensus. In MetroCourt I found that the primary impulse was towards consent other than where the children were clearly not returning to parental care. This has, I believe, fed resentments amongst local authority social workers that parents' needs are trumping those of their children. In the final section above I have asserted that that is an over-simplification of an extremely complex matter involving the law, fluid aims of the local authority and the respective rights of children and parents which are not necessarily in opposition to each other.

Chapters 5 and 6 have both investigated messiness, that derived from work with families and that derived from the character of family justice. I turn now to the professionals charged with bringing order to the messiness and the mechanism by which they seek to do this – judges and case management.

Chapter 7: Judging and Case Management

Introduction

Families are sent to court with their lives upended. Proceedings flit unpredictably between consent and opposition and suffer disruptions. Enter case management, charged with restoring families to, and keeping proceedings in, a state of good order. As readers will recall from Chapter 3, judicial case management was a key element of modernisation, to which end judges were mandated to attend a residential training course, told that their performance against the 26-weeks timeframe would be measured, and advised that care proceedings might be handled by a different type of court if the reforms were not delivered (Masson, 2015). Judges were also discouraged from appointing experts as they were held by the Family Justice Review (FJR) to be of mixed quality and to contribute to delay. As I show in this chapter, which addresses research question 5 (How do judges relate to families and how do they manage cases?) there is a sense of urgency in public law proceedings in MetroCourt but delay is not easily eradicated within a complex system like the family court, particularly so in the current context of excessive demand and remorseless pressure. Further, case management is not just concerned with concluding proceedings by a given date. It also entails humanity, delivering fair justice and trying to make the best decision in the context of an ambiguous history, an uncertain future and life-changing decisions.

The chapter starts with a vignette taken from an online hearing, that as in previous chapters introduces themes that will be explored further. It is followed by some personal reflections on writing about judges and then a discussion of humanity – how it is (or is not) demonstrated in hearings and, with reference to vignettes 1 and 3, why it is important. There is then a detailed discussion of case management including the various factors that impede the progress of a case in and between hearings. There are discrete sections on experts and delay as these aspects of case management are enshrined in legislation. The chapter concludes with some reflections on modernisation's flaws regarding case management.

Vignette 3 (Case F)

First hearing in a case regarding a young child who is subject to a second care application, the placement with his special guardian having broken down. The interim care order that is sought today is uncontested. Haziness surrounds other items brought to the court's attention that are briefly discussed in this hearing and that will be more fully explored in assessments and hearings as the case progresses, specifically: Why did the placement break down? Might it have been salvaged with more professional input? Have the birth family's circumstances changed sufficiently for the better to make them viable carers? How will the child's special needs impact upon plans for his/her future? Today's core decision – interim order and foster placement – is agreed but there is a host of inter-connected problems to be sorted. A course of action needs to be established that will enable the court to peer through the mist.

Once the perennial technical glitch has been resolved the online hearing starts with the judge asking if mother is present. Yes, says the local authority lawyer, she's the one wearing glasses if that's helpful. A glance at the screen reveals more than one woman wearing glasses. 'It's not helpful' says the judge laughing, then speaking directly to the mother: 'You're not taping the proceedings, of course you're not.' That's different, I think, as just about every other hearing I've sat in on has started with the reading out of standard text warning participants that making their own recording is a criminal offence that could lead to a fine or imprisonment. The judge then asks the special guardian to confirm that she's connected. Yes, says the latter, I'm using an Amazon Kindle. 'That's new to me' says the judge, and then 'for future hearings I'd like to see you in court.' What, I wonder, is being conveyed in these exchanges between judge and lay parties? Something akin to this: yes, this is a formal and, to you, alien setting but we can do away with some of the stuffiness; you will be treated with respect; justice is to be served with humility and humanity. The tone of voice when addressing lawyers during the remainder of the hearing will be business like, let's cut to the chase – 'I have the documents so off you go' and then 'let's discuss assessments and experts'. To lay parties it's

lighter, softer, a small connection made that might make those on the sharp end of family justice feel a tad less exposed.

The discussion turns to the retrieval of the records relating to the previous proceedings. 'I don't want my staff to have to photocopy everything' says the judge 'I suggest inspection of docs by the lawyers to sift them for relevance.' Nobody is in any doubt that the task has just been firmly delegated. It's reminiscent of a leadership style that got the best out of me, and that I tried to practice: be clear what you expect; wear your authority lightly; appeal to (most) professionals' wish to do a good job. The local authority lawyer raises the assessments for which court approval is sought: what should be done in-house or fall to experts; the proposed identity of experts; the key matters to be explored by the assessments. The judge establishes whether the parties are agreed – 'do I take it that there is no opposition to the local authority's proposition for assessments?' Then comes the judicial stamp on the discussion: 'I approve parenting assessment of the special guardian. I think the key assessment is the boy and his needs. This is the one to press on with and others will hang on the outcome of that. I'm unclear whether we need an assessment of mother and her (diagnosis) but she has such trust in (the expert adult psychologist) and that will feed into the parenting assessment. The special guardian should be assessed as a parent as that's what she's been.' This injunction is prompted by lawyers' submissions but goes further. The lengthy list of desirable interventions is transformed into priorities, with the assessment of the boy's needs at the centre and all other activity revolving around it. The outline of the case has been formed by the advocates pre-hearing but it has been given further shape and momentum by the judge: focus on these matters, put this one first, and we'll get there. The rationale for decisions is explained and it includes a dose of pragmatism. The case for an assessment of mother has hung in the balance but has been tipped towards a yes by the mother's confidence in the expert.

A date is fixed for the next hearing and actions to be taken before then agreed. By then, says the judge, 'I hope to see each other in person. I've stopped predicting when our doors will be fully open, but I like people to

come into court for issues resolution and final hearings. I want to see people and have people see me if that is achievable.'

Writing about / talking to judges

The prospect of writing about judges unnerves me. I know this for sure the third time I catch myself apologising for not even being a lawyer, let alone a judge. Then I find myself in a discussion with a judge who tells me that a colleague, several of whose hearings I've observed, has described our informal post-hearing discussions as being 'like therapy'. That's not their purpose but it's revealing that they are experienced as such. On another occasion I'm in discussion with a judge and we share an insight. 'Have you discussed this with colleagues before?' I ask. 'No, it's the first time.' I worry less, recognise that the outsider's questions and observations may enhance understanding or enable the taken-for-granted to be articulated. I also start thinking about what these events might tell us about the lot of the family judge.

One of the cornerstones of child protection social work is the team. There is always a colleague to check things out with informally, managers with whom the burden of decision-making can be shared. I've witnessed too many internecine struggles in teams to get dewy-eyed about them but, when they work well, they provide invaluable support. Conversely, judges (magistrates apart, who generally work in threes together with a legal adviser) operate on their own. Theirs is a largely solitary duty. The decisions they must make are momentous, having the power to shape the child's life indefinitely and in multiple ways – safety, psychological well-being, identity, attachments to caregivers, connections with siblings, friendships, the capacity to form a healthy intimate relationship, education. The 'big' decisions, the ones that most profoundly impact upon the child and its family, are made formally at the final hearing but, as we have seen in the vignettes provided to date, weighty decisions are made along the way: where the child should live pending the final determination, what contact there should be with the family, how the family crises are to be contained, what steps are to be taken to help the court make the optimal decision when the time comes. There are few opportunities for judges to reflect upon their work (Eekelaar & MacLean, 2013). Support for dealing with stress is deemed to be important but

the provision of support to judges is thin (Thomas, 2017: p.52). Working alone, making life-changing decisions, not much by way of an established support network, a lack of feedback: I start to see how snatched conversations with a researcher might work for some judges as well as me.

Humanity

Remember the code HDM from vignette 1? HDM – how it's done matters: an inelegant way of capturing the importance of how family justice is dispensed. In that vignette I was taken by the compassion in the judge's voice and the tacit admission of the family's pain. I note in vignette 3 that the judge speaks directly to both adult parties at the start of the hearing, and then again at the end, and later ask the judge why. When in face-to-face hearings, s/he replies, 'the first thing I do is find the parents and look them straight in the eye. This is the best way of reassuring them you have them in your sights. In every type of hearing the local authority takes control, they call evidence, they tell the story as they see it. Parents think it's being done to them and the court is only interested in the local authority.' Addressing them directly is, I infer, the same principle modified for the online court. You may feel powerless, fear that your views count for nothing, but you will be heard. We're not going through the motions here. I am independent of the local authority. When decisions are made about your children you should be in the same space as the person who makes that decision, able to look each other in the eye. Even if the final determination goes against you, you'll leave the court feeling you took part in a human exchange as well as a legal process. These are other examples of judges speaking directly to adults:

> *Examples 15*
>
> *'I'm so grateful to (extended family member) for the support you have offered. What you have done is nothing short of remarkable. You have put your siblings' needs above your own to keep things stable during what has been a terrible six months during which your father has been absent through no fault of his own. I want to thank you for what you've done and what you continue to do.' (Case E)*
>
> *'We hope that things go well for you with your assessment and that you're able to care for your children.'(Case I)*

'I encourage mother to be patient and wait a week. It is best to ensure risks are well understood. Regarding father's risk assessment, the local authority will complete ASAP but given the meeting with probation is a week hence it is likely to be two weeks before it is completed… I'm grateful to the parents for listening attentively. You'll have the chance to put any questions to your lawyers afterwards.' (Case K)

'I want to stress for the parents I am not deciding whether the children are telling the truth regarding abuse they say they've suffered. At this point it is sufficient that they have made complaints.' (Case H)

On other occasions, the words are ostensibly addressed to lawyers but meant equally for the ears of the parents:

Examples 16

'On balance it is clear contact needs to be supervised, there is too much burden on father, I recognise mother's health is better, I hope this continues. The local authority has a duty to keep contact under review and the longer she is well the more likely it is they will relax oversight.'(Case A)

'The parents are to be congratulated for accepting it is currently against children's welfare to send them home and for accepting move to foster carers is in their best interests…(they have) a very child-focused view.' (Case J)

'The key question is whether parents can handle the emotional trauma derived from (incidents that led to proceedings).'(Case H)

Empathy and humanity are important (Care Crisis Review, 2018). Thus, praise is offered, patience advised, decisions explained, encouragement given. A different kind of family court ethnography, one that studied parents' experiences, might profitably explore how parents receive such communications. My hypothesis is that parental low self-esteem and chronic depression mean that some words will be wasted. Others will be heard, however, and self-belief and hope may follow. I've got something right, even if it meant relinquishing my kids for now. Maybe I can hack this after all. This is what I need to focus on. Keep at it. Parents are

given a small boost that is at odds with their experiences as they have slid down the slippery slope from child protection plans, to pre-proceedings and then to court, their self-worth, I speculate, plummeting further with each new setback and humiliation. I'm reminded of the first communication to parents in our work with families that were in the child protection system a couple of decades ago that went something like 'please start by telling us what you've done well' (commonly followed by 'you may be struggling to recognise it, but you will have got something right so let's try again'). We believed that their feeling better about themselves was likely to promote a more positive relationship with their children, whatever shape that took, in future. The court context is very different, but a similar principle underpins judges' fleeting non-verbal and verbal communications to parents, an eye-contact here, a sentence there. If human connections aren't made, what are we asking parents to do? Turn your lives around, cut back on cannabis and alcohol, learn to deal with conflict without raising a hand, become kinder – oh, and do all that while feeling rubbish about yourself and that you have absolutely no control over the future. Building resilience, together with boosting problem-solving skills, is at the heart of therapeutic jurisprudence, as delivered by Family Drug & Alcohol Court (FDAC) and, unsurprisingly, it delivers better results than non-FDAC cases across various measures (Harwin et al, 2016). It is also a core aim of the Pause programme seeks to build up the self-esteem of mothers who have had children removed from their care (Boddy & Wheeler, 2020).

That how justice is done matters is well-established. Daicoff (2013: p.157) argues that litigants' satisfaction depends less on winning/losing than it does on having a voice, being treated with respect and dignity, and perceiving those in authority as trustworthy. These findings echo those of family justice studies (see Hunt 2010 for a summary) that fairness of the process is just as important as the outcome. That is why the judge in vignette 3 intends to see and be seen and why enforced remote justice may be a barrier if it filters out some of the empathy. It's also why judges go to considerable lengths to explain their decisions on contested matters, stress that their mind is open as to future decisions and set out arguments pro and contra. 'The more difficult and finely contested matter', 'on the other side of the equation' and 'on balance' are phrases used to indicate judgements that might have, and may yet, go the other way.

The attempt to make human connection is not present in every case. I see it occur more often in cases where the same judge hears the proceedings in their entirety, less commonly where there is judicial discontinuity. My speculation is that judicial dropping in and out of cases may depersonalise the process. Also, judges have their own styles and construe their role differently (Hunter at al, 2016). In the following extract, taken from an interim care order (ICO) hearing, we see the antithesis of judicial practices described above:

> *Example 17 (Case G)*
>
> *Mother's lawyer: she understands there is no other immediate option. She does not consent to that but is not actively opposing it. She very much wants to engage in the proceedings…*
>
> *Judge (cutting in): Mother does not oppose, that's all I need to know*
>
> *Father's lawyer: Father would very much support mother's position.*
>
> *Judge: thank you, I like brevity.*
>
> *Children's Guardian's lawyer: I can be even shorter, the guardian whole-heartedly supports the application.*
>
> *Judge: (proceeds directly to making the order)*

This is a judicial approach that might be lauded for its efficiency and economy – we're out of the hearing in a flash – and, as we shall see in the next chapter, judges have been exhorted (McFarlane 2020b, 2021) to devote considerably less time to each hearing. It is also one that adheres to a conventional view of judging in an adversarial system, characterised by 'impersonality, emotional detachment and disinterestedness' (Hunter et al, 2016: p.7). Nonetheless, the judge's intervention jars. It makes clear that the sole matter of interest is the parties' position on the application and a race is then on as to which lawyer can express their clients' positions in the fewest words. Shouldn't the parents' lawyers be allowed to utter a couple of sentences in support of their clients? Doesn't their individuality merit 30 seconds of the court's time? I am reminded of matters I discussed in Chapter Two, specifically Complexity alerting us to the dangers of performance management and mass processing and how these can drain humanity from the work (Lipsky, 1980; Wastell et al, 2010). The judge's injunction

to set out the parents' position, and not a word more, is the kind of intervention that I think an interviewee had in mind when making the following comment:

> *'Judges are sometimes too explicit in making it clear how little attention and time they've got, and I think you know if I was that parent having my child removed and the judge was saying clearly ''I've not enough time to think about it'' I'd find it really difficult.' (L1)*

I have no way of knowing the impact on the parents of the judge's intervention in example 17. They may be indifferent for all I know. However, I can imagine an alternative scenario in which they are resentful or (maybe worse?) where they feel the game is up and become apathetic. And I worry about the effect of that on the relationship they are most likely to have with authority figures in future, including the court should the parents find themselves back there, or in their ongoing relationship with the local authority in respect of this or subsequent children. How justice is dispensed matters and not just in the here-and-now.

Case Management

Read the FJR (2011b, pp. 103-112) on the matter of case management within the public law domain and one might draw three conclusions: this responsibility falls to the judge; the challenge is basically to adhere to a timeframe; and the solution is some judicial training. It is a linear take on how authority is dispensed in the family court with little attention to the part other professionals play or the hurdles to concluding cases in a timely manner. In the same year Pearce et al (2011: p.59) set out a different view of case management, one in which the judge's control of the process was circumscribed by a host of factors and practice diverged from that stipulated within the Public Law Outline (PLO):

> 'Court case management, supposedly a joint enterprise between the parties and the court, has effectively been devolved to the group of legal representatives. It is simply too difficult for the court to keep grip of such unwieldy cases. Judicial caseloads and work patterns mean that judges lack the time to manage cases, and the route to judicial office does not automatically equip judges with the administrative and managerial skills which would be required.'

The latter account resonates more than the former with my observations in MetroCourt ten years on, as well as being substantially the more realistic depiction of how authority is exercised, and cultures evolve within complex systems like the family court. I'm not convinced that case management is 'effectively devolved' to lawyers in MetroCourt as I see judges take an active role in shaping cases. However, Pearce et al's (2011) portrayal of case management as a collective enterprise is surely the more accurate. I discuss that now in more detail, starting with judicial efforts to drive cases forward. I then turn my attention to the various barriers to the smooth progression of a case, followed by reflections on how momentum is lost between hearings.

Active judicial case management

Case F, that features in vignette 3, is challenging by virtue of it concerning a young child who is subject to a second care application (the relationship with the special guardian having broken down) and who has been, the court is told, damaged by his/her experiences, hence the allocation to a senior judge. It is apparent in this case, as it is in others, that heavy lifting has been done by the parties and their advocates before the judge steps into the hearing. An embryonic plan is put before the court for its approval: what needs to be done, by whom, and when. A draft order is provided to the court for its approval. Where there is a contested application for an ICO the court must be alerted to this. In vignette 3 there is no opposition to the order sought by the local authority, the child being already 'voluntarily' accommodated under s20 of the Children Act (1989). The principal element of the plan drafted by lawyers is therefore assessments. This is a common feature of first hearings in just about every case I observe. Other elements vary from case to case: the disclosure of records from prior proceedings, the identification and contacting of a father, the involvement of the Official Solicitor, the engagement of family and friends, liaison with the police.

The judge is provided with many proposed actions, but in the vignette above, this lacks a clear focus or structure. The judge does what a good manager in an organisation might do, identifying a primary goal (establishing the child's needs) and setting out how other work will contribute to that. It turns a 'shopping list' (a metaphor used in court to describe actions advocated by lawyers) into a more

coherent plan. The judge's active intervention strikes me as a good example of one of the evolutions of the family court identified by a former President of the Family Division (President) (Munby, 2014: p.12) as being the judge setting the agenda. As the cases advance the parties are responsible for compliance with orders and recitals, and their lawyers charged with keeping the court abreast of progress and problems. Meanwhile, the judge needs to be alert to a loss of focus, flaws in the execution of the plan or emerging difficulties and seek to remedy these. Here are some examples:

Examples 18

'Can I ask about housing? The tenancy is in mother's name. I understand why the father would want the tenancy in his name. I don't understand why, if plan is for parents to live together, the tenancy cannot be transferred to him… This really does need to be sorted out.' *(Case A)*

'I'm troubled by the fact that so little has been achieved in respect of parents engaging with services. Some have not been engaged with or dropped at an early stage. The priority is in my view housing, therapeutic work, drug and alcohol work.' (Case A)

'I want to make it clear that I remain concerned at no clear plan for a school return.' (Case C)

'I'm not sure the children should be driving contact (with parents) and that it should be prompted by their distress.' (Case H)

'Should there be any problem in the coming days, and I mean days, regarding take up of the housing there needs to be an immediate referral of the case back to me. (Carer's) counsel will provide good and sound advice. Hearing a judge's view can help. I need to be emailed if there is a problem and we can organise a short and discrete hearing so issues can be hammered out.' (Case J)

I see judges take the initiative, make their mark on the case, drive things forward. However, a qualification must be made at this point. All the above examples are taken from hearings conducted by senior judges. They are more likely to have the authority and experience to become hands-on. Also, in MetroCourt they are

more likely to see a case through from start to finish than more junior judges. Where cases are reallocated the trend is upwards rather than downwards as complexities come to light, such as the involvement of the Official Solicitor. There are challenges for magistrates derived from their limited availability. Consequently, the same bench (generally one presiding magistrate and two 'wingers') rarely sits on the same case in MetroCourt. Theoretically, the legal adviser will be a consistent presence through the course of a case but both the legal adviser and magistrate I interview tell me that rarely happens. In interview the former alerts me to the difficulties magistrates face during the pandemic:

> *'We've tended to use Microsoft Teams and what I can't stress enough is how difficult some of this is where the magistrates are concerned…The judge can control (the hearing). They're much more in in overall control, whereas with the justices you know its decisions by committee. They are used to being together in a retiring room with the legal advisor in person and able to communicate.'* (LeA)

Before the formation of the unified family court in April 2014 most public law proceedings started in the magistrates court. As set out previously, few public law cases are now allocated to magistrates in MetroCourt. Notwithstanding their sitting on (ostensibly) less complex cases I worry that they might struggle to propel cases forward in the way their more senior colleagues would. I did not see enough magistrate-led hearings to form a clear view but share two different experiences. I watch one such hearing where the chair of the bench is firmly in control of the process, making use of skills that I expect come from a professional background. In another case the magistrates speak to me briefly before the hearing starts, telling me that they have not sat together before. They seem to be unnerved by problems with their laptops (they are using their own), missing information, late submissions and, I intuit, by my presence. The gravity of the matters upon which they must adjudicate weighs heavily upon them. It is, as one says to me, different from working on traffic matters and proceeds of crime earlier in the week. There is palpable anxiety ('this is neither the time nor the place for a contested ICO'; 'the hearing didn't need three hours, we've spent an hour faffing around') and negativity towards the local authority's position in previous proceedings ('they wanted a child arrangements order to father and to wash their

hands of this child')[50]. I considered not telling this story, worrying that it would be seen as punching down on those who had graciously volunteered their time out of a sense of duty. And then I decided that I should share my concern that some magistrates, notwithstanding the support they receive from a legal advisor, may struggle to provide the drive, focus and leadership public law cases need and that their being allocated such cases is born of necessity. 'Given a blank sheet of paper would you make use of magistrates?' I ask a senior judge. 'Private law yes, probably not public law' is the response.

Barriers to progressing a case

The management of a case, when done well, looks deceptively simple. Commonly there are many hurdles. First, there is the need to absorb, and make sense, of a lot of material at short notice. The court bundle is frequently referred to critically in hearings: its size ('I have read the bundle, not all 128 pages'); missing documents ('it's unfortunate that the viability assessment is not in the bundle as it provides important information'); and confusion as to which version of a document has been provided ('none of changes you've just read out are reflected in the version you've sent'). Many is the time the hearing pauses while a discussion takes place as to where precisely a document is to be found. Position statements[51] are also troublesome as they are submitted late or not at all. Over twenty years ago Hunt (1998) wrote about the need to make available to judges the time and information to manage cases. Her argument still holds good. There is muddled information, insufficient time and sometimes long gaps between hearings. There is a limit to how much detail any of us, judges included, can hold in our heads[52]. Some of the minutiae of cases is bound to be forgotten and there must be times when judges hear familiar cases but feel like they are starting from scratch.

Secondly, there are many matters to attend to. In vignette 3 these include: establishing the core issues on which the proceedings are likely to turn; protecting court staff from being overwhelmed by administration; keeping the court bundle

[50] These comments are made in the magistrates' discussions, not in open court.
[51] Short statements setting out parties' positions, provided for a specific hearing.
[52] A Complexity term for this is 'bounded rationality' (for example Baumgartner et al, 2017) to denote the cognitive limitations of decision makers, especially when faced with too much data and too little time.

to manageable proportions; delegating tasks to the parties' lawyers; approving local authority assessments; adjudicating on expert assessments; concluding the hearing by its appointed time; and fixing a date for and length of the next hearing. As we saw earlier, lawyers are often the judge's friend in the management of a case. They work collaboratively in line with the directions of the PLO and are praised by the judge accordingly – 'thank you for working in such a positive and collegiate manner.' That is just as well. Take away the preparatory legal work and public law proceedings would not be viable. A Case Management Hearing is generally scheduled for an hour unless there are particularly complex and/or contested matters requiring judicial direction. There is insufficient time for lengthy, open discussions about what is to happen next. The judge needs something they can work with, a proposal that they can mould, clarity regarding which matters require their pressing attention. Lawyers also commonly exercise self-restraint in the interests of moving the case on:

> *'So what I find in family proceedings, particularly the more senior and the more experienced people are, is that they try to resolve those problems rather than keeping them in their back pocket to produce them at the 11th hour.' (J1)*

However, an adversarial system obliges lawyers to present their clients in a favourable manner and to highlight the flaws in others' actions when that might serve their clients' interests. They pursue arguments and make applications which are, to draw on the lexicon of the court, most unlikely to run, when so instructed by their clients. Their common inclination to work collaboratively (Pearce et al, 2011) is interspersed with antagonism. A parent with a reasonable shot of keeping their child is more open to dissuasion by their representative from making a frivolous application than a parent in prison on a murder rap who has nothing to lose. The judge is then placed in an awkward situation. S/he may think that an application has zero prospect of success but must avoid dismissing it out of hand lest an appeal follow for a breach of article 6 of the Human Rights Act (1998)[53]. If one can get past the inherent pathos of a parent seeking the impossible it is faintly amusing to hear a lawyer submit 'it is only right and proper

[53] Right to a fair trial.

that my client…' while the body language screams 'I've been told to do this, please don't hold it against me.' 'It can be supremely irritating' says the judge to me subsequently. 'I think ''for the love of God'' but it's the job'. Listening politely, while scowling into the screen is part of a judge's lot.

Lawyers and judges hail from the same profession and must know each other's tricks of the trade inside out. Their relationship is symbiotic. Lawyers need judges to get the best outcome for their client. Judges need lawyers to promote an equality of arms (Welbourne, 2016) and to get the job done. They see private law proceedings as being more unwieldy and harder to control, precisely because the high bar for receiving legal aid in private matters results in many litigants representing themselves:

> '*What works well (in public law), particularly in contrast to private law proceedings, is in most cases, having most parties represented and I think you can't overstate the amount of time that saves.' (J2)*

Much of the time judges and lawyers seem to pull in the same direction. Lawyers are bound by court rules to help the court to meet the overriding objective (Ministry of Justice, 2020) which includes ensuring that the case is dealt with expeditiously and fairly, saving expense and allotting a case an appropriate share of the court's resources. Pearce et al (2011) found they take their duties to the court seriously. However, lawyers are also 'partisans, acting *for* clients' (Masson, 2012: p.203, emphasis in original). Their assistance to the court is blended with the occasional intervention that the judge may consider a distraction. Periodically, then, lawyers need to be kept in line, told to hurry up, stop complaining or point scoring, mildly discouraged from making an application that will require a considerable amount of court time to no discernible end:

> *Examples 20*
>
> *'I have a limited amount of time, I have a trial waiting to start.' (Case B)*
>
> *I'm going to ask other lawyers, general moaning won't help me…unless you think you can run this case in three days I don't see how we can run a finding of fact before (date). I think the local authority has no chance of running a case. I'm reluctant to list, what even is the point*?' *(Case J)*

'That's a rabbit hole, I'm not going there…(lawyer tries once more)…again no, that's a rabbit hole. I realise that the local authority has not provided a programme of work. I'm with you (mother's advocate) on the criticism of the local authority. They cannot say they'll do things and then turn up at the next hearing having not done them. It's not acceptable. But I don't want the social worker spending time writing documents for the court that could be better spent.' (Case C)

Judges need parties' lawyers to thrash things out before the hearing but cannot afford to become over-reliant upon them. One judge tells me that s/he forms a view as to the core issues before reading position statements and that there is commonly a divergence between the matters s/he identifies as central and those suggested in the position statements. 'I tend to get into difficulties' s/he continues 'when I haven't clearly identified the key issues.'

Losing momentum between hearings

This is an extract from my interview with one of the judges:

Researcher: What I see in the actual hearings is a perpetual sense of urgency. I don't see anyone twiddling their thumbs. That's not to say there aren't avoidable delays but…

Judge: I think you're right, but that's because the hearings are the only time that everybody really gets together and focusses so I think we lurch from the first hearing where everyone starts out with really good intentions and trying to get things through as quickly as possible, but the minute the hearings are over, almost literally the minute the hearing ends, it's then the thumb twiddling happens. (J2)

The hearings generate a shared sense of purpose and momentum that is then lost. Judges are too busy to be chasing lawyers between hearings, checking on the progress of cases and whether court orders and recitals have been completed. They are necessarily reliant on the network of professionals to sustain the impetus. Alas, the latter also are under pressure and their attention gets drawn to more pressing matters on other cases which have a forthcoming hearing. Cases whose hearings are not imminent tend to go on the back burner

The consequences are a scramble to get everything in place at the 11th hour, abject apologies to the judge, some hearings being vacated and delay. Occasionally an interviewee will bemoan the tardiness of another profession – 'we're left waiting for Cafcass to form a view' complains a social worker – but more common is an acceptance that the root of the problem is a lack of resources. These quotations from interviews illustrate the point:

> *'We're so overrun and I missed a kid turning 17. Not just me but everyone missed it. You know some really good barristers on the case, we all missed it.' (CG)*

> *'I'll look at the file for a hearing and I'll see on it that somebody wrote in two months ago to say they're not going to be able to do the report in time because they weren't sent the order until two months after the last hearing. And it's only at that point I realised that the hearing won't be effective, and it's because we don't have enough people. Our inbox is enormous and it's not kept up to date. People look at it usually, I think, about four or five weeks after an email comes in.' (J2)*

> *'They wanted an adjournment for two weeks because the (professional) was too busy. And if that's not a catastrophic failure of the system, I don't know what is…There's just not enough money to deal with family issues.' (J4)*

Several interviewees comment favourably upon the management of cases in the hearings. I share their view, noting how much business frequently gets done at high speed. However, effective project management requires consistent attention, co-ordination and leadership, as well as high-functioning administrative and IT systems. The commitment and skill of family justice professionals can only mitigate some of the inefficiency that follows inevitably when the system cannot adequately provide these. Better resources would not guarantee a big improvement, but they might facilitate better communication, a more orderly approach to management, more rapid responses to dynamic cases and ultimately less waste.

I turn now to two specific elements of case management, the use of experts and adherence to the statutory timeframe.

Experts

Reducing the number of expert assessments was a major thrust of the modernisation of public law cases, as these extended cases and were of variable quality (FJR, 2011: pp.117-121). The criterion for the appointment of an expert in proceedings was consequently raised by the Children & Families Act (2014) s13(6) to 'necessary to assist the court to resolve the proceedings justly'. Practically every case I observed in MetroCourt a decade on from the FJR involved the commissioning of at least one expert report, a trend also noted nationally, albeit with regional variations, by the Public Law Working Group (PLWG) (2019, 2021). I argued in Chapter Two, with reference to Complexity, that the law requires the exercise of discretion and judgement and that its impact hinges on how it is interpreted and turned into practice (McBride, 2017; Murray et al, 2018). In MetroCourt, and beyond, practitioners seem to have rejected the intention of the law which was to make the appointment of an expert an exception rather than the norm.

The common pattern in the cases I observed, as in vignette 3, was for the advocates to agree early in the proceedings that expertise was needed, identify one of more suitable alternatives and present the court with dates by which expert reports could be filed. Judges queried whether an expert was necessary, occasionally expressed frustration that the process had not started in the pre-proceedings work, influenced the focus of the assessment but did not refuse a request to appoint an expert. Interviewees recounted instances of judges turning down such applications (but also told me of successful appeals against those refusals being lodged subsequently which may act as a strong disincentive to saying no). As demonstrated by this submission from a children's guardian's lawyer, the added value of the expert report was seen as trumping any delay that may ensue:

> *Example 20 (Case H)*
>
> *'You have the benefit of the children's guardian's early analysis. Assessments are agreed. The children's guardian had concerns about delay occasioned by commissioning Dr X but accepts Dr X is well-*

regarded and believes it is important to get the right expert even if it means further delay.'

One expert was an independent social worker – a bugbear of the FJR as they were seen to be duplicating the work of the local authority – the local authority arguing successfully that this would strengthen the court's grasp of cultural matters. A multi-disciplinary team was engaged in the sexually harmful behaviour (SHB) case. Otherwise, all experts were child or adult psychologists or psychiatrists. The PLWG (2019, 2021), noting a rise in the number of experts, specifically independent social workers and psychologists, proposed that 'professionals who know the family and the child should feel confident about reporting to and advising the court' (PLWG, 2021: p. 65) – essentially a renewed plea to social workers to stake their claim to expertise. As a member of that clan I'd love to see that happen but, alas, it sounds to me like wishful thinking. I don't recall a single submission from a lawyer representing the local authority in MetroCourt arguing against an expert appointment on the grounds that their client could fill that gap. Nor do I hear a children's guardian do that though the one I interviewed told me of several occasions s/he had done so. Why might that be? A social worker (SW1) tells me that 'a lot relates to social workers' lack of Confidence'. In a similar vein, a lawyer (L3) is at pains to say that it is not the fault of social workers but that they have attracted so much criticism, and not been helped to develop the requisite skills and have thus ended up 'defended and defensive and embattled and stuck.' The Munro Review (2011: for example p.133) found that an over-dependency on rules and prescription had impeded the development of skills and self-assurance among social workers. I sense that has not changed much. Then, as noted by Beckett et al (2006) there is the common local authority social worker perception that the children's guardian's opinion carries more weight than theirs:

'*The court often puts in place a psychiatrist who's put forward by the guardian when we're saying we don't need a psychiatrist for these children. We sort of just know that when we say no to an expert they will just say yes.' (SW2)*

'I've been working in the court for six years, and I just get so frustrated by the power of the guardians. That just drives me mad because some of them will meet the child once and will meet the family once and they're just so powerful in the court arena' (SW3)

There is, as a judge (J1) suggests, a 'self-perpetuating thing…the more you use experts the more social workers become unskilled and think the court doesn't have faith in them.' Historically, the court might look instead to the children's guardian to provide an expert opinion by virtue of their experience and focus on the child. I note, however, that guardians appear to be inactive in some cases and several interviewees tell me that Cafcass is having problems recruiting experienced staff. It may be that the influence of the children's guardian has diminished in MetroCourt. Factor in the complex familial intra- and interpsychic matters – child attachment, delayed development, attention deficit hyperactivity disorder , somatic symptom disorder, chronic depression, drug addiction to name but some – that feature in many MetroCourt proceedings and one can readily comprehend why the bar for deeming an expert to be necessary is lower than that envisaged by policymakers and why the court may look to those who specialise in these fields. Many cases now turn on emotional harm to the child which is intrinsically more open to contest than a physical injury or untreated health condition (Bainham, 2013). Further complications are derived from cultural and religious factors. The court may understandably feel it could use a little help in understanding the influence of these matters upon the child's welfare and the prospects of future amelioration.

Two further questions are begged. Which party most wants an expert to be commissioned? And do expert reports help? In both cases, and in line with the ambiguity and contestability of so many family justice matters, it depends who you ask. These are some of the things I'm told. Parents want experts because it will increase their chances of keeping the child. Local authorities want them because it will bolster their case and allow them to copy and paste liberally into their final reports. The court needs reassurance as to the right path to take. Maybe all we can conclude is that everybody has a potential stake, and that it varies from case to case. What seems clearer is that there has been a cultural shift – an emergence in the language of Complexity – whereby turning to experts

has become the normative expectation of how things get done. Most expert reports are deemed by interviewees to be helpful though I hear a common lament that some tell the court what it already knows and that they can be unduly damning of parents. I pick up doubts as to how much value they add in the more straightforward cases, as articulated by this judge:

> *So yes, you need evidence and assessments are just evidence but it could be in a much lighter form I think a lot of the time. Done more quickly by the social worker. A lot of those 'What's your parenting like?' assessments, social workers obviously have the expertise to do them. I think, though, it's a time issue. That's why they don't usually do it.' (J2)*

Delay

The discrepancy between the statutory requirement to conclude most s31 cases in 26 weeks and practice in the courts, up and down the country, grows ever wider. As of the first quarter of 2021/22 MetroCourt completed s31 cases close to the national average of 44 weeks[54]. Just two of 42 Designated Family Judge (DFJ) areas concluded cases in under 30 weeks, and several were taking on average over a year. The data is crude as it does not tell us whether, or why, some cases may last substantially longer than others, but it does show that the gap between statute and court practice – a trend that was well established before March 2020 – has widened during the pandemic.

My observations of MetroCourt judges and professionals in action do not lead me to conclude that they have abandoned the idea that making timely decisions is important. Judges clearly feel responsible for driving the case forward, chivvying the lawyers to get their clients to speed up or to work cooperatively to find a hearing date:

> *Examples 21*
>
> *'Can I get you to discuss urgently with the local authority?'(Case C)*

[54] Public law data - Cafcass - Children and Family Court Advisory and Support Service (Accessed 22 November 2021).

'I'm very concerned delay has crept in again, I cannot see any good reason for it.' (Case C)

'The dates are pushing us to the cliff edge of 26 weeks.' (Case I)

'You may have to be more flexible re dates but (doing so) will provide continuity and help getting there speedily.' (Case H)

Speed matters but timeframes keep slipping. What is going on? We have seen above that case management, however skilled and committed, cannot make a system that is suffering from unremitting demand and stagnant resources operate efficiently. The PLWG (2021: p.51) attributed delay fundamentally to 'systemic insufficiency – shortages of just about everything'. This included shortages of: time leading to problems in listing cases; judges, lawyers, social workers and experts; and court administrative staff. This accords with my impressions. I feel constantly like I'm watching a system that is running to stand still. Many hearings are vacated and relisted weeks ahead, most of them, a judge tells me, because demand exceeds supply, and a judge cannot be found. There are precious few gaps in the court calendar: a legal adviser says to magistrates in a hearing 'I've made an urgent enquiry re listings, have been given a date but am unhappy about it, it's too long.' Lawyers apologise to the court for not taking full instruction from their clients in advance of the hearing. Forgiveness is sought for recitals and orders that have not been fully implemented. Errors are made. They are, of course, made in well-resourced systems but they are more likely to occur, and less likely to be rectified, when everybody is under stress. Strains in one part of the system bring cracks in other parts. An example - a lawyer puts a crucial action to one side pending the receipt of the court order, the order is delayed, the lawyer forgets, the action is not undertaken, the oversight is not spotted until shortly before the next hearing. Another – the local authority is tardy in formulating its questions to an expert, the specialist assessment is pushed back, the court loses faith in the local authority.

As discussed above, there is also a substantial reliance on experts. Masson et al (2017) found that cases with one expert lasted on average about five weeks longer than proceedings that had no experts. Those with two or more experts lasted a further four weeks. A social worker explains clearly how the

commissioning of an expert report can set off a chain reaction: nobody has global expertise, gaps in evidence are identified, further specialist advice is called in, re-assessment takes place in light of others' findings:

> '*We use a lot of experts. I reckon most cases… we have maybe three…then you get a domestic abuse assessment that can't for some reason be part of your parenting assessment, so that calls in another expert. And then suddenly the parenting assessor says ''well, I think there's underlying mental health vulnerabilities that I can't really comment on.'' So then you need to bring your psychiatrist in to do that. Then the addendum to the parenting assessment considers the psychiatrist's report, and then it all takes so long.' (SW3)*

What else is going on? I think there are three relevant factors. First, as discussed in Chapter Three, there are philosophical objections to the statutory timeframe. Establishing how the child's welfare is to be promoted is a complex and time-consuming matter involving various inter-connected matters: children's needs, parental resources and resolution, family history etc (King & Trowell, 1992). The court is reluctant to rush a momentous decision (Beckett et al, 2006). I hear the occasional reference to the timeframe in hearings ('given earlier comments regarding 26 weeks the court needs to be informed swiftly if there are problems with the timescale'; 'we don't want to exceed 26 weeks') but the lack of enthusiasm for it expressed in interviews makes me wonder how much commitment there is in practice. Masson's (2015: p.6) distinction between legislation being in force (on the statute) and implemented (shaping behaviours and decisions) comes to mind. A judge articulates how little attention s/he pays to the 26-weeks rule:

> *'We've now lost the idea of 26 weeks entirely. It's almost never referred to. I mean, occasionally someone will tell me in the hearing how many weeks we're at but before the pandemic they actually did record it in the order every time. And now I, I'm afraid I just don't bother*.' *(J2)*

Other interviewees view the rule with deep suspicion, concerned that the performance indicator becomes an end it itself and exerts an unfortunate impact upon practice:

I think it has the potential to compromise both welfare and justice... the fact legislation says we must do it within 26 weeks doesn't make the delay principle any firmer. It's almost legislating for legislation's sake is how I see it. The legislator needs to show to the public that they're doing something, but it doesn't actually do anything on the ground, except make people count it. (LeA)

'But because you are judged accordingly by the Ministry of Justice, I presume, or whoever it is that looks at your case management skills[55], then it is a very, very unhelpful' (L2)

'It might interest you to know that when the figures were at their best so far as the number crunchers were concerned then Ministry of Justice started saying ''well, shall we reduce the statutory timetable then? Can we bring it down further? Can we bring it to 20 weeks?'' That's what happens when you have a time imperative like that.' (J1)

Secondly, care proceedings do not take place in a bubble. The Legal Aid Agency (LAA), Official Solicitor, Department of Work and Pensions, and General Practitioners are some of the agencies/ professionals that the family court depends on in some capacity including the provision of information, funding and representation. Each of these has its own priorities which do not necessarily correspond with those of the family court. The police and Crown Prosecution Service move at their own pace in line with their duties. The FJR (2011: p.16) asserted that it would be 'the responsibility of the trial judge to achieve the time limit', an unrealistic expectation when one considers the systemic qualities of proceedings. The capacity of the court to adhere to a timeframe is further impacted by work undertaken, or not undertaken, during the pre-proceedings phase, as illustrated by this tense exchange between a judge and local authority lawyer:

Example 22 (Case I)

[55] I refer the reader back to my comment regarding diverse levels of professional autonomy in Chapter Three . In this quote the lawyer may simply be expressing their ignorance of the precise mechanism by which judicial case management is overseen by government. However, s/he may also be inadvertently illustrating how little oversight there is of the legal profession compared to their social work colleagues.

Judge to local authority lawyer: the question is around why this assessment is being sought now. The children's guardian raises the PLO pre-proceedings. Can you address the court about this? Things can often be done by consent.

Local authority: we did explore that but consider there is a need for psychological assessment.

Judge: what I was trying to get to, what pre-proceedings work did you do?

Local authority: we didn't go through that process in this case.

Judge: may I ask why?

Local authority: we took the case to panel, and they advised it should go straight to proceedings.

The judge is overtly irritated by the local authority's decision not to commission an assessment before instigating proceedings. You've dumped this on the court and brought delay is the inference. The local authority lawyer is defensive and reluctant to spell out why the authority acted as it did. It was plainly not motivated by acute risk to the children as it did not seek their interim removal. The lawyer's reticence to say precisely why it did not do more work pre-proceedings is, by my interpretation, that a candid answer might go something like this: 'because my authority does not trust the court to take account of our work so why would we waste our time and money?' I hear such views expressed in interviews: 'the frustrating thing for social workers is often when the assessments are done in pre-proceedings, the Court just ignores all of them anyway, and they have to redo them like three months down the line and that's pretty repetitive for families as well' (SW2) is one of many examples. Masson et al (2020a) suggested there were benefits to be had from pre-proceedings work notwithstanding a diversion rate of about one-fifth. Those I interviewed were more sceptical with a lawyer (L3) and social worker (SW1) employing the same metaphor of the legal tail wagging the social work dog – that is, gathering evidence dominates pre-proceedings work at the expense of promoting change.

There is, I believe, a circular problem driven by mutual suspicion: the court does not invariably trust the local authority to make sufficient efforts to keep cases out

of court or prepare the case fully; the local authority does not invariably trust the court to respect its endeavours and evidence. This is not a new phenomenon. The FJR (2011b: p.101), for example, found that 'the relationship between local authorities and courts can verge on the dysfunctional' and advocated more discussions between the two in the hope that this may bring about a more harmonious and effective relationship. I see strains in the relationships between the various local authorities and MetroCourt judges. How far these extend seems to vary from authority to authority as the judges have worked out which ones (and which local authority lawyers) they have confidence in. Open antipathy is rare. But the reciprocal suspicion is there, a constant background hum, barely audible most of the time but with the propensity to burst into a few loud and discordant notes now and then.

The third, and final, point is that judicial power is constrained, particularly so in respect of the local authority. If a parent does not comply with a court order the consequences for them are likely to be disastrous. The same is not true of the local authority, as articulated by the following interviewee (L2): 'And in the end, if the local authority doesn't do it, what are the sanctions? I mean the sanctions are you know ''Come here and I'll give you a good dressing down in public''. Who gives a shit? There is no sanction in the end.' I see this play out in court, as the judge responds to an application by parents for contact with their children under s34 (Children Act, 1989):

> *Example 23 (Case C)*
>
> *Judge: I am asked to make a s34 order. Contact was agreed and it is crucial it takes place. There is some dispute over what's happened but clear that the child has had much less contact than agreed. The local authority has been faced with difficulties during lockdown. It is correct that some problems are attributable to contact centre closures and pandemic-related issues. I'm very concerned so little contact has happened and unclear why. An order under s34 is unusual as the local authority has a duty to organise contact. Nevertheless, it is clear the time has come to make an order. If problems relate to third parties an order will give local authority the backing it needs to ensure contact takes place. The order is*

for twice a week face-to-face and once virtual. That is an order of the court and it must be complied with or an application must be made to vary it.

The judge is sympathetic to the problems the local authority is facing, frames the order as helpful (rather than punitive) to them in their negotiations with contact centres but also makes explicit that compliance is required. Fast forward a few more weeks and we're back in court again, the parents' response to contact still not taking place being to apply for the ICO to be discharged. The judge's displeasure with the local authority is made explicit – 'there has been a clear breach…the response is unacceptable…a serious breach of rules.' I don't know precisely how to interpret the facial expression of the local authority lawyer on being reprimanded by the judge but not giving a shit is indeed on the short list. The judge's hands are tied. To discharge the ICO would compromise the child's safety. The sins of the local authority would then be visited upon the child.

Reflections upon case management

Modernisation presented a linear and narrow view of case management: judges needed to exercise firmer control of proceedings; their task was to conclude proceedings on time; their performance would be measured solely against a statutory timeframe. I have argued in the previous two chapters that the challenging and dynamic qualities of many cases, together with the tensions between adversarial and consensual qualities of family justice, pose significant challenges for the court. In this chapter I have shown that judicial case management entails much more than concluding proceedings in a timely manner: acting humanely, coming to a nuanced understanding of the child and family, making the optimal decision also count. In the following chapter we shall see further challenges derived from the pandemic.

I have also shown that judicial authority is paradoxical. On the one hand family court judges have immense, perhaps unparalleled, power to influence the course of children's lives and their family members. On the other hand, their power to exert control upon public law proceedings is restricted by myriad factors including: pressure; judicial discontinuity; lengthy gaps between hearings; reciprocal mistrust between judges and local authorities; and reliance on other professionals

and organisations that are also struggling under the weight of demand and insufficient resources. Depending on other professionals, specifically lawyers, is a double-edged sword. It is both essential and written into the PLO. Without it cases will stall. However, there is an inherent conflict in the role of the lawyer to both aid the court and represent their client. Parties' applications cannot be dismissed on a judicial whim lest appeals follow, bringing more expense and delay. And finally there is the event described just above where the local authority gives every impression of being content to defy the court. At such (rare, I imagine) moments the court's power is not merely limited, it is illusory.

My overall impression is of public law case management being delivered for the most part in MetroCourt with skill, determination, humanity and respect. However, that is not my main point, that being an appeal, when case management next appears on the policy radar, for it to be addressed more systemically. An end-of-term-report along the lines of 'must try harder' won't do the trick. Nor will tweaking the PLO or throwing up hands in horror at expanding timeframes. Family justice, and those who work in it, deserve better.

Chapter 8: MetroCourt During the Pandemic

Introduction

This chapter addresses research question 6: what were the impacts of Covid-19 on family justice; and what can we learn from family justice's response to the pandemic, through the lens of Complexity Theory? As we have seen, family justice is accustomed to dealing with challenges derived from policy shifts. I have witnessed two previous major transformations, brought on by the Children Act (1989) and Children and Families Act (2014). However, in both cases there was an extended gap between the passing and enactment of the legislation during which preparations were made and professionals trained[56]. The pandemic brought a different challenge, obliging family justice to work remotely though it had little experience of so doing and practically no time to prepare.

The chapter starts with a vignette that sets the scene, followed by reflections about humour. There is then a discussion of (another) effort to reform family justice, this one driven by technology, followed by a review of what the literature tells us about remote courts. Attention then switches to MetroCourt and challenges derived from remote working: the technical glitches, the barriers to dispensing justice fairly and the disturbance to the broader child welfare system. Themes raised in previous chapters – for example the importance of humanity, the need for parents to feel they have been treated fairly, the social inequalities many families in proceedings experience, why case management is challenging – are re-visited with reference to remote working. I argue that remote working, while enabling the family court to function during the pandemic, is problematic in respect of each of these matters. I then move onto the leadership that was (or was not) provided during Covid-19, following which comes a discussion of what has been learned and Complexity-influenced reflections upon post-pandemic family justice recovery. Central to those reflections is a plea not to repeat the errors of modernisation. I end with a coda – a short description of the final hearing of case C that featured in vignette 1.

[56] Preparation for the latter legislation was described in Chapter 3; Masson (2020) proves a detailed account of the substantial work undertaken to support the implementation of the Children Act (1989).

Vignette 4 (Case P2[57])

The mother joins the hearing and then fades from the screen almost immediately. She seems to be walking round the home trying to get better reception. Father is using a different device and is visible from the nose up. Mother settles down but can barely be made out. There are three of her in shadowy form. The judge points this out. Mother: 'can you see me now?' Judge: 'I can see an outline, that's about it.' For the next few minutes mother will occasionally appear on screen but when she does, like the father, she is visible from the nose up. 'Are mother and father in the same place?' asks the judge. No answer. The judge asks if the interpreter is present. No answer. Mother can be heard whispering. The judge says to one of the lawyers 'I cannot see you'. Odd sounds intrude, the first one like someone gargling, the second a high-pitched squeal. Lawyers can be seen and heard stifling giggles. The invisible lawyer says they have a message that their video isn't working and will have to join by audio only. The clerk can be heard in the background talking to the interpreter. Father cuts in to say he is organising a phone for the mother to connect to the interpreter. Henceforth the parents will appear in the same picture but only from the chin down. The judge: 'let's just check which number the interpreter should call on', then says to the clerk who is off-screen 'they need to use father's number'. Then, the judge again: 'hang on, how is the interpreter going to hear what is going on?' The hearing was meant to start nearly fifteen minutes ago. The judge: 'right, he (interpreter) is going to call right now.' Another minute passes. The phone mother is using rings. Father answers and says 'I'm going to put you on speaker.' Judge: 'No don't. You mute your microphone please.' The interpreter appears on screen. Finally, we're set up and introductions start. As that ends mother's lawyer cuts in: 'Up to this point the interpreter's mouth didn't seem to be moving.' Judge: 'can the parents indicate they are getting interpretation?' The interpreter's mouth still does not move. We are now at 18 minutes.

[57] One of the hearings observed while awaiting formal permissions. The judge alerted participants to my presence and purpose. No information about the family or case is used.

Humour

In vignette 3 that opened the previous chapter I described a judge making a light joke and laughing which I understood as a small gesture of empathy, an attempt to make anxious family members feel at ease. I don't think the stifled giggles described in vignette 4 above were of the same order. I interpret them rather as a nervous reaction to family justice being made, to borrow Goffman's (1989) previously cited formulation, to look like a horse's ass by malfunctioning technology. I do not believe that disrespect to the parents was intended - my overall impression in this and other hearings was of parents being treated sensitively and respectfully by lawyers[58]. However, I wonder now if the parents present in the hearing described above may have found the giggling discourteous, and if feelings of anxiety and alienation may have been heightened by those who hold power over them sharing an in-joke from which they were excluded.[59]

These are other examples of remote working causing professionals to be amused:

> *'Yes, and I mean we joke about, you know, the cases, I had the case where the guy got up and went to get himself a bowl of cornflakes 'cause he hadn't had his breakfast yet.' (J1)*
>
> *'Do you remember the man who turned up bare-chested and the woman in a thong?' (one magistrate to another while waiting for a hearing to start)*
>
> *'I look up and see a lawyer drinking coffee from an Arsenal mug. I mean, what the…' (judge in informal discussion)*

Humour – and I speak here as an 'insider' (see discussion of positionality in Chapter Four) who has made extensive use of it to get through the working day in one piece - can act as a powerful defence against anxiety, stress and the 'unbearable feelings' (Ferguson, 2018 p.423) sometimes generated by working in the fields of child protection and family justice. I've known children's services

[58] For example, there was an exchange in a hearing about a hair strand test, specifically how this could be completed as the father was bald, the solution being to use genital hair. I looked and listened for a smirk or smile – and there was none.

[59] I repeat a point made several times above: an ethnography that captured parents' reactions might beneficially explore such matters.

offices where there are jokes and laughter and others where there is a reverent hush and I know which one I'd sooner work in. However, wearing an 'outsider' hat I feel conflicted about it, and acknowledge the potential for humour to cause hurt – I'm thinking here particularly of the bare-chested and thong quotation above – to those who are already in pain were it overheard. So, laughter is functional, acting as a defence against one's own and others' distress but sooner or later it catches in the throat. It's not just what the family is going through, poignant as that is. There's also what family justice has been going through. Endless demand, broken families, ambiguity of purpose, trying to reconcile adversarial and consensual approaches, avoiding delay without harming welfare or fairness and all the rest: isn't dealing with all that hard enough already? Watching hearings like the one that features in vignette 4, where family justice is propelled by circumstances beyond its control into near chaos, the gut reaction is to wish it could just catch a break.

Context: reform and remote justice

The HMCTS reform programme

A reform programme was launched by the government in 2016 to improve the accessibility and efficiency of the justice system in its entirety – crime, civil, tribunals and family (HM Courts & Tribunals Service , 2019; Byrom, 2019). The stated aspiration is to make better use of technology, to move some activity out of courtrooms, to close some of the court estate and to produce improved administration and management of cases, thereby making cost savings of £265 million per annum. This is a massive enterprise entailing several streams, multiple projects and a planned cost of £1.2 billion to implement the changes. Its early progress was reviewed by the National Audit Office (2018b) which noted that the project was advancing slowly and that costs had increased while projected benefits had decreased. It further noted various risks to the programme meeting its target completion date (that had already been revised from 2020 to 2022), including the risk of making decisions before it understood the system-wide consequences. The reform programme was also scrutinised by the Public Accounts Committee (House of Commons, 2018) which made similar criticisms, albeit more bluntly: there was not a clear articulation of what a reformed justice

system would look like; engagement with stakeholders was weak; delivering a project of this scope at this pace was likely to bring unintended consequences; the hasty rollout of virtual hearings risked reducing access to fair justice. In response (HMCTS, 2019) published an update extending its timeframe to 2023. Its brief update on public law focused exclusively on the provision of information and the improvement of administration, including local authority applications being made online and orders being produced in real time. The document was silent on the bigger and more contentious issue of which aspects of public law proceedings were under consideration as suitable for remote hearing.

Remote courts: what does the literature tell us?

A month after lockdown started the President commissioned two reviews to be undertaken by the Nuffield Family Justice Observatory (NFJO), one setting out professionals' experiences of remote working thus far ('the rapid review' - Ryan et al, 2020a), the other setting out what was known about the impact of remote courts on access to justice ('the evidence review' - Byrom, 2020). The latter summarised the findings from 21 small-scale studies, most of which concerned parties in detained settings such as prisons or immigration removal centres. It noted significant gaps in the evidence both generically as there is, for example, no empirical research into fully-video hearings, and specifically in respect of family justice whose experience of working remotely had not been previously investigated. The evidence review raises several concerns about remote hearings for those who are in institutions. They are less likely to appreciate the gravity of the hearings or avail themselves of legal advice, thereby presenting their case less effectively. They find it harder to follow proceedings remotely which further disadvantages those who have learning difficulties or who are functionally illiterate and those for whom English is a second language. Their vulnerabilities are less readily spotted. Their credibility may be reduced. It is difficult for them to communicate clearly with lawyers and intermediaries. The study highlights risks concomitant with remote access courts, notably weaker access to justice and increased inequality. Can we assume the same can be said of families in family justice? No, but we might note some obvious similarities between many parents in care cases in MetroCourt and the prison population – poor mental health, social deprivation, learning disabilities, low levels of

education, language barriers – and speculate that similar problems might occur in both contexts.

The argument for online courts is made by Susskind (2019) who proposes that we need to conceptualise courts as services rather than as places in which parties gather simultaneously. Within his vision there are no hearings as such, but rather written evidence is submitted online with the judge making a determination and publishing it on an online platform. This proposed method is, he argues, particularly suited for resolving low-value disputes (a term that cannot conceivably be applied to public law). He acknowledges that he has not devoted much of his attention to some aspects of law, family work included, but holds that his proposal is likely applicable to them. One wonders how familiar he is with the field. A stronger argument he makes is that technology advances at an astonishing rate and that what currently feels unimaginable may soon be ubiquitous, such as technology that can accurately create the experience of being in the same room as other humans when one is actually connected remotely. He suggests that a full-scale court transformation programme should take about ten years to take account of all the technical, design, testing and human elements - rather longer than the twice-extended HMCTS timeframe, and bearing no relation whatsoever to the alacrity with which family justice had to embrace remote working in the Spring of 2020.

A more sceptical approach is set out by, inter alia, Boden & Molotch (1994) who caution us to avoid over-reliance on information technologies. Their argument (see also Broadhurst & Mason, 2014b) contends that copresence is central to social life adding context to the words and providing enhanced understanding through non-verbal modes of communication – eye contact, facial expressions, hand gestures, body movement, access to the full range of human senses. Goffman (1963: p.22 as cited by Urry, 2003: p. 163) articulates this idea succinctly: ‘copresence renders persons uniquely accessible, available, and subject to one another’. By this argument face-to-face encounters trump mediated communications in various respects that are all key to child protection and family justice as they: promote a deeper, more empathic, understanding of others’ emotions, beliefs and motives; allow us to convey and gauge others’

commitment and authenticity; enable mutual trust to develop (Boden & Molotch, 1994; Van Manen, 2007).

It is instructive then to note the President of the Family Division's (President) (McFarlane, 2019) setting out of the results of the Judicial Ways of Working exercise, a pre-pandemic consultation with the judiciary about the HMCTS reform programme. There is some support for using video to enable vulnerable parties or those who cannot travel to contribute but a palpable anxiety about conducting 'fully video' hearings, that is where the judge and all parties are on video. Concerns include a reduced capacity to read non-verbal communication and body language, alongside apprehensions relating to the quality and reliability of the equipment, the gravitas of the court being diluted, the barriers to parties and advocates gathering pre- or mid-hearing, and confidentiality. The document offers the following reassurance:

> 'there is currently no specific proposal to expand fully video hearings in the family jurisdiction beyond the current test. Specifically, and subject to the evaluation of the test, it is felt that fully video hearings will not normally be appropriate for contested cases involving the giving of oral evidence, multi-party cases, cases concerning litigants in person, and/or cases concerning children.' (McFarlane, 2019: p.3)

With the benefit of hindsight, the key word in this statement is 'normally'. For all of us life became distinctly abnormal in the latter part of March 2020.

I turn now to the remote court in action. Various challenges to effective justice came to the fore during Covid-19 relating to the technology, fair justice and system-wide problems. I deal with each in turn.

Challenges to dispensing justice effectively

Technology: problems and accessibility

> *'And then you've got one party who's only able to ring in, and you've got one party who keeps freezing up and it's very difficult because everybody gets frustrated because you're sitting there like a lemon for 20 minutes while people are trying to ring in.' (LeA)*

The family court may conduct a hearing or take evidence through video or telephone (McFarlane, 2019 sets out the legal basis). HMCTS (2021) data regarding all courts and tribunals tells us that 42% remained open in some capacity about two weeks into the crisis and that 90% of hearings were being conducted remotely, one-third by video and two-thirds by audio. In the first two weeks of the first lockdown (starting 23 March 2020) audio hearings across all courts and tribunals in England and Wales increased by over 500%, and video hearings by 340% (Ryan et al, 2020a). From this generic data we can deduce that technology was transformed, at very short notice, from a fringe activity to central to the functioning of the family court.

I first watched hearings in February 2021, a good ten months after the first lockdown, and so did not witness the court making its initial adaptation. The rapid review (Ryan et al, 2020a), published in May 2020 and thus capturing immediate responses, reported as many positive as there were negative reactions to remote hearings. The accounts given by MetroCourt judges in interview are weighted towards the negative. There is relief at having got through the immediate shock and a view that remote working is not to be dismissed out of hand, as articulated by Judge 1: 'It's taught us that we can exist virtually and there are some things we can achieve virtually which are useful.' There is also pride taken in the adaptability and initiative that was shown, such as the legal adviser who reviewed the case lists, contacted parties to pre-warn them of how the court was now operating and to explain how BT Meet Me[60] worked. The prevailing sentiment is however that the early days were, in the words of Judge 3, 'absolutely horrendous'. Home working meant that paper files could not be accessed. The technology was not robust enough to support reading extensive documentation

[60] A telephone conference call facility – much in use during the early days of the pandemic.

remotely. There were insufficient licenses to make proper use of telephone hearings. It was not possible to establish whether a family member connected by phone was in a private space and safe. Connections dropped. A judge conducted a hearing from home, was relieved that the technology held up, then discovered that their spouse and children had been unable to do their professional/school work as the entire bandwidth had been taken up by the court hearing. The start of the hearing that features in vignette 4 is messy but my hunch is that is a rather more ordered version of what went down in the spring of 2020.

By February 2021 the situation had improved in MetroCourt. Video was now the default option for remote or hybrid hearings which interviewees considered significantly preferable to audio which was more in use in the early days of the pandemic. Interviewees tell me they'd started to get the hang of how to make things work. There are obvious efficiencies stemming from professionals working from their homes rather than travelling to and from courts. And yet the technology remains problematic, and its impact upon the smooth running of the family court questionable. The Transparency Project (2020) reported that remote hearings generally started on time, the need to have everyone join at a given time instilling a greater degree of discipline than is required in physical courts. With reference to MetroCourt I say well, yes and no. That the lengthy hanging around in the public areas of court waiting to be called into a hearing was eradicated is true. Remote hearings had an appointed start time for each hearing that was mostly adhered to. Participants didn't get held up by traffic jams or bus cancellations. However, starting the hearing proper – as in conducting its core business – was difficult. This is apparent in vignette 4. Connecting the interpreter in such a way as s/he could communicate clearly with the parent and be visible to the court, so that s/he could signal if lawyers are speaking too fast or their client needed to say something, took time. The unmoving lips tells us the interpreter had lost a connection. The parents were on screen but barely visible: it was impossible to see their expressions let alone interpret them. A lawyer could not be seen. A judge tells me that the first quarter of an hour of a hearing is about standard to deal with the various issues derived from remote justice, particularly where an interpreter is brought in, as is often the case in MetroCourt. Having an interpreter present is essential if the parents are to take part in the hearing but making use

of one (or occasionally two) is problematic as lawyers forget to pause to allow the interpreter to do their job, or the interpreter has a poor connection which requires the judge to summarise each submission which the interpreter then translates.

I see technical problems in practically every hearing. Connections are lost, a judge disappears, parents also disappear (whether by virtue of internet problems or choice is unknown), participants speak when muted and leave their sound on when they should mute, there is confusion around which mobile is to be used, a magistrate appears on screen but with their child's name on display. Such experiences have been documented at a national level by the rapid review (Ryan et al, 2020a) and its follow-up survey (Ryan et al, 2020b) published in September 2020 which together noted malfunctions (incorrect contact details, the court being unaware that somebody had lost connection) and capacity issues (incompatible equipment, no training, support unavailable leading to disruptions and cancelled hearings). What I had not appreciated, until I saw it for myself, was how much energy the judge needs to expend on the micro-management of technical issues within remote hearings. This is on top of the 'normal' case management duties discussed in the previous chapter. It must be tiring and frustrating. If I was the judge in the hearing described in vignette 4 I'd be worn out even before we came to the business of harm, orders and assessments. If I was a parent my anxiety would be off the scale. Further, the time available to deal with core business is reduced, stress and delay are increased. What the judges are feeling they keep to themselves within the hearings, or deal with lightly, other than one judge who gives vent to their annoyance with exemplary sarcasm: 'Are we good to go? I'm so sorry for the delay. The Ministry of Justice has upgraded our security. This is wonderful except that I don't have access to my emails and am unable to join my hearings.'

What of Susskind's (2019) argument, raised above, that technology will inevitably improve in time? The massive advances made in the technology available in the workplace and home lead me to accept his claim as irrefutable. However, this will not solve at a stroke all the problems associated with remote working. Interviewees lament the formalisation of communications between lawyers and the concomitant loss of corridor discussions that might help settle disputes or narrow down the matters requiring determination by the court. 'The ability for

advocates to interact with their clients, interact with their opponents, quickly and subtly is really an important part of the process and you do lose that suppleness' a lawyer says (L1). Numerous interviewees believe that professional standards have slipped during the pandemic, with respect for the court and families taking a knock:

> *'We know that some people are going to use the pandemic a bit. I think, for instance, there's some experts who are not seeing people face to face when they should be. I think that if you're careful you could see someone. There are some lawyers who aren't seeing their clients.'(CG)*

> *'I would say that the psychiatric and psychological assessments that we've been receiving since the pandemic started are a lot of virtual interviews. I can't really think of one recent one where we've found it really helpful. We do find frustrating the virtual side of things because we do think that that often means that they aren't capturing things and it's like a one-off virtual interview for this big assessment.' (SW2)*

> *'But I think there is…a laziness that you are not being a lawyer if you are not engaging properly with your client. Most of our care clients, are, by definition, quite needy, they're quite vulnerable, and you know in terms of building up a relationship of trust, which is really, really important.' (L1)*

> *It's a sort of organic thing that happens in the system. There definitely was a period when people were…we did all pull our socks up somehow and everyone stuck to deadlines in orders more than they do now. Now they don't at all, because the message generally is ''well it's ok, you can kind of forget about that''…the expectation is that you don't need to do things to time.' (J2)*

I watch a hearing (case C) and am struck by how many loose ends there are and minor matters that the court is asked to determine such as how one of the children should travel to school. Seeking to involve the court in issues of how many buses a child can reasonably take each day seems a poor use of limited court time and I note that the judge refuses to adjudicate. Afterwards, in informal discussion, the judge expresses their irritation with a culture of sloppiness brought on by Covid-19:

> *'From the advocates' point of view their work is much harder during pandemic. They cannot speak to clients. From judges' perspective things are coming in so much later. A hearing scheduled to start today at 9.30 had a key position statement arrive at 9.50. It feels at times like everyone's taking the piss. Normal rules are not seen as applying. Everyone has created their own new way of working but they don't match. I'm getting fed up of feeling like I'm dropping into the middle of a conversation rather than a plan that's been worked out. Advocates are not doing as much work in advance, focus is being lost.'*

Better technology would be most welcome, but questions of affordability and accessibility will also need to be addressed. There is already a serious imbalance in the quality of kit available to actors in care proceedings[61]. Professionals have generally better access to computers than do parents, many of whom do not have computers or strong Wi-Fi and rely on ringing into the hearing. An interviewee suggests that parents who are reliant on their phones may be unable to read the court bundle which will hinder their ability to know the case against them and instruct their lawyer accordingly. The gulf in quality between technology used by professionals and that used by parents unsettles those I interview who recognise disadvantage being piled upon disadvantage. They tell me of misunderstandings made by parents: one who did not realise that the court had made an order regarding their child; another who mistook a barrister for the judge. Harker & Ryan's (2022) summary of the findings from three NFJO reviews of remote courts also expressed concern the lay parties struggled to understand what was happening in hearings. Grasping what is going on is hard enough for the stressed (and possibly learning disabled) parent in the alien environment of the court. Add remote courts and inadequate technology to the mix and the playing field looks too unlevel for comfort.

Impediments to fairness

There is a legal imperative to conduct justice fairly. There is also, as set out in the previous chapter, a moral element in that feeling respected and heard

[61] There also seems to be an imbalance within the judiciary as I'm told that magistrates use their own equipment.

matters, and experiences of proceedings may reverberate through future relations between the family and the authority of the state as exercised by children's social care and the court. How has this panned out in public law during Covid-19?

The broad view among interviewees is that remote working impedes fairness. I hear the odd neutral reflection along the lines that administrative hearings might continue to be held remotely, and parents excused from attendance, without their suffering any disadvantage. Conversely, there were many expressions of concern. First, there is the question of parental participation – of understanding what is happening, feeling thoroughly engaged in the process, receiving the support they need – when co-presence is not possible. In a court parents sit just behind their legal representatives facilitating communication between them. Lawyers can consult with parents, take updated instructions from them. They can have discussions in the public areas of the court before and after hearings. There is no such ready connection in a remote court. I hear parents' lawyers offer to stay online after the hearing to explain to them what has happened but suspect that their capacity to gauge their clients' understanding and mood is hampered. Likewise, judges find it harder to intuit parents' emotions and convey empathy in a remote court: 'if somebody gets terribly upset when you are in court, you can stop everything and demonstrate compassion to them in a way that you just can't demonstrate on a screen' (J4). Consequently, parents are, I expect, more likely to experience themselves as being passive observers rather than participants. I note the blank parental facial expressions on MS Teams. This may be driven by anxiety and self-restraint but I wonder if the physical distance engenders a degree of emotional detachment as well – a 'this isn't happening to me' experience. Parents who, as described above, wander off screen to procure breakfast or appear scantily clad are not just hungry or hot: inadvertently, they appear to be signalling a lack of respect for the authority of the court, which they would be less likely to do within the four walls of the court. Interviewees articulate concerns that parents do not grasp the gravity of the proceedings and that they might thereby jeopardise their prospects of meeting the court's expectations:

> *'We've had certain cases where I don't think the parents have taken it as seriously because they've just been at home, so actually to be in the court*

environment helps them realise the seriousness can be quite helpful.' (SW2)

'We've all had to adapt and things are getting better, but most of my clients I would say have not really properly participated in remote hearings.' (L1)

'So you look on the screen and you'll see the parents and you might see them do anything from get up and leave and come back to just turn around and do something else. Well, they wouldn't do that in the courtroom because the whole of their attention would be on what's going on in front of them. On one level that's discourteous and what does that tell me? That tells me that they're not feeling this in the same way.' (J1)

'I also think being in the courtroom makes people - you've probably heard this before - it gives it much more gravitas.' (LeA)

Secondly, I hear numerous apprehensions that humanity is diluted by remote courts. Removing a child from a vulnerable parent connected by phone only is described by Judge 3 as being 'horrible…right up against the boundary of is this justice?' There is no lawyer or social worker in the same physical space as the parent to deal with the emotional fallout of losing a child. Harker & Ryan (2022) refer to an incident of a parent self-harming during an online hearing. Lawyer 1 reflects upon their clients' experiences: 'that's what parents are going to get out of it, you know that lawyer treated me with respect, fought for me, gave me some advice and you lose most of that if you are doing remote hearings.' There are speculations as to how children will feel on reading their files in the future when they learn that the most important decision made during their childhoods was debated by people who weren't even in the same space. Judges' confidence in their ability to read people is reduced: 'Is it fair, for example, to do a final hearing, particularly a fact-finding hearing where magistrates are trying to assess the credibility of witnesses and make findings? Is it fair that we do that on the telephone?' asks the legal adviser rhetorically in interview. Judges are troubled by making decisions to split families in such circumstances. They tell me they do what they must do, but it is, I expect, at some cost to them as well as to the family.

Issues of disadvantage and fair justice have been explored in earlier chapters and in the literature around co-presence and the impact of remote working on

courts (all cited above). The NFJO follow up survey (Ryan et al, 2020b) is particularly interesting as it had more input from parents and relatives who accounted for about 10% of responses compared to 3% in the first survey. Moreover, three focus groups and ten interviews were held with a total of 21 parents whereas all other data across both NFJO studies (Ryan et al, 2020a, 2020b) was collected by online survey. Parents and organisations that support them were more inclined than professionals to describe remote courts as unfair, citing barriers to communicating with legal representatives before and during hearings and to getting the support they need. A survey of parents and family responses to remote courts conducted by the Transparency Project (2020b) produced similar findings. The follow-up NFJO survey (Ryan et al, 2020b) is keen to present a balanced view and to affirm professional commitment, but the impression is of actors making the very best they can of tough circumstances. A judge who took part in that survey and describes remote or hybrid hearings as 'inferior' (p. 19) is, I suspect, articulating views held by many colleagues, including professionals in MetroCourt, that the new order imposed by Covid-19 was something to be endured through gritted teeth rather than joyously embraced. We might speculate that Susskind's (2019) optimism that online courts will be as appropriate for family justice as they are for a small claims dispute would be met with many a raised eyebrow by those engaged in family justice during the pandemic.

System disturbance

Complex systems must adapt to changes in their external environment. Thus, family justice is influenced by events within the broader child welfare system over which it has no direct control. Research into 15 local authorities found a reduction in referrals, investigations and child protection plans in April and May 2020 but the trend then reversed (Baginsky & Manthorpe, 2020). The number of care applications made in England between April and September 2020 was only marginally lower than the corresponding period in 2019[62]. Applications for domestic violence injunctions rose, especially in inner cities (McFarlane, 2020b). Many kinship carers, about one-half of whom are grandparents and who have a

[62] https://www.cafcass.gov.uk/about-cafcass/research-and-data/public-law-data/ (Accessed 16 October, 2020).

disproportionately high rate of chronic illness, were obliged to self-isolate (Ashley et al, 2020). Direct contact between looked after children and their parents was under threat from the closure of contact centres and the need to protect vulnerable primary carers (Harrison, 2020). Barnardo's Cymru declared a state of emergency in fostering brought on by a steep rise in demand and an equal fall in inquiries to become a foster carer (Lloyd, 2020). Expert witnesses said their ability to provide reliable evidence to the court was limited by their being unable to observe interactions between family members or to meet directly with the family (MacDonald, 2020). Cafcass (2020) closed its offices and decided that children's guardians should work remotely. Local authorities worried about how to reconcile keeping staff and families safe with the discharge of their statutory duties (Turner et al, 2020). Labuschagne et al (2021) reported a child going to a placement alone in a taxi as the social worker was unable to accompany them. Each of these events has the potential to shape a care case, impacting upon the court's view of the robustness of the evidence or upon the welfare implications of the decisions it is required to make.

The system disturbance highlighted by the literature is apparent in the hearings I attend and accounts I hear in interviews. Contact centres are closed. Domestic abuse programmes move online. The availability of experts is reduced. Assessment work lacks the depth required to unpick complex issues. Social workers qualify without spending any time in face-to-face work with families. Cases are held up, like the health assessment required to move case J on that is postponed by the General Practitioner catching Covid-19, thus leading to a hearing being vacated and a further lacuna in decision-making for a child. Nobody can be found to drive a child to contact. Everything seems to take longer and to be less satisfactory. There is ambiguity as to quite how much can be attributed to the pandemic as opposed to human motives and behaviours. This is the case with families on the edge of care: they are as prone to getting ill, or being required to self-isolate because of contact with someone who is ill, as anyone but there are suspicions of manipulation, of the pandemic being exploited to keep social care at a distance:

> *'There's some families where, like you know it's funny you had to isolate five times in the last year. There's one family that had to isolate once a*

month and you know they were in pre-proceedings…that was one of those where you think "Surely you can't constantly be getting pinged." So yeah, there really are families where it's a very good way of avoiding us.' (SW3)

The challenges to services have been prolonged and unpredictable as the threat posed by the pandemic has risen and fallen several times. I expect recovery will be slow and hard. To function at pre-pandemic levels services will need stable and strong workforces which brings me to another concern - the well-being of professionals. Their resilience during the crisis is not in question. A system that was widely deemed to be on the edge pre-March 2020 has held together because of individual and collective commitment to keep it afloat. This has taken its toll. Traumatised, wired, worn out and exhausted are some of the adjectives interviewees use to describe how they and colleagues feel. There are times they look like that too. One judge I interview speaks with such feeling that I have a momentary anxiety that s/he might burst into tears and I might need, via MS Teams, to find a way to provide comfort. I wonder if some professionals are now so sapped that they will do what I have seen many a burnt-out social worker do over the years: find a less stressful job, fall ill, retire early. The social workers I speak to seem particularly downbeat about their profession:

'Covid may have changed the game – lowered resilience and made staff question whether they're prepared to do this job. They think "I'm not putting up with this.'" (SW2)

'It's been really challenging for people not being in the office. There's no work/life cut off because of being from home and I think the long-term effect of that, it's been quite difficult for social workers. I think lots of people are just burning out from that. And we've got a real staffing issue in (authority) at the moment. I don't know if the staffing issue is actually like morale reasons or just because we haven't got people available. (SW1)

'Lots of my team-mates are retiring, so I've got lots of new guardians. Some people are off sick with stress so my team's got to reallocate all their cases. So, yeah, it's difficult and, you know, I would describe the system as almost broken. (CG)

'I definitely enjoyed my job so much less since doing 90% of it remotely.' (SW3)

I made the point in the previous chapter that the team is central to social work. I expect that many involved in family justice, regardless of their profession, have derived less job satisfaction during the pandemic as they are blocked from making the human connections with families that can make turning up each day worthwhile regardless of the difficulties. I wonder if social workers have suffered a double deprivation: less able to relate to families, and less able to draw on the informal and formal networks that sustain them. If the rewards and the joy have been removed from child welfare social work then it would not be surprising if many in it have been calculating whether there is another way of putting a roof over their head. If that is the case, statutory social work will, according to Social Worker 1, be plunged into crisis. We cannot recruit already s/he tells me: what will we do if the 'grand resignation'[63] comes our way?

Leadership

Leadership is going to be important as family justice tries to recover: what form did it take during the pandemic? The previous shortcomings of the government-chaired Family Justice Board (FJB), which describes itself as 'the primary forum for setting direction for the family justice system and overseeing performance' (Government UK, 2022) were highlighted by, inter alia, the Care Crisis Review (2018) as noted in Chapter 3. I looked again at the FJB's website to see whether it had actively engaged with the field between March 2020 and March 2022. On the assumption that it has uploaded minutes of all its meetings, it convened three times in that two-year period. That sounds barely enough for a superficial oversight of performance, let alone the more demanding business of setting direction during a crisis. The minutes of the last gathering in May 2021 (Government UK, 2021: p.3) suggest I'm not alone in holding that view as one attendee notes that 'the FJB doesn't meet often enough to allow detailed consideration of the bigger issues.' There is a serious disconnect between the

[63] Denotes a pattern, accentuated by Covid-19, whereby dissatisfied employees resign in droves.

Board's hubristic account of its role and its performance. If I were a practitioner in the family courts, I would not be looking to the FJB for assistance.

The senior judiciary was considerably more forthcoming, issuing five guidance documents[64] during the first nine months of the pandemic, most of these coming from the President's office. Three were published within the first three weeks of the pandemic: McFarlane (2020a), Macdonald (2020) and Burnett et al (2020). The flurry of activity implies a deep shock to the entire system and the desire to provide an urgent steer through some very choppy waters. That is an entirely understandable impulse, but it carries the risk of guidance over-kill which can cause professionals to feel bombarded and confused, particularly if the documents cover similar territory and contradict each other (Ryan et al, 2020a). The President's second guidance document The Road Ahead (McFarlane, 2020) issued some three months later acknowledged that national guidance is a blunt instrument and sought to provide 'signposts not directions' (McFarlane, 2020b: p.4), the judiciary and legal profession having made it clear that further directive guidance would be unwelcome. The document author sets out his accord with this view, noting that things are bound to develop in different ways in different courts and over time.

The purpose of The Road Ahead (McFarlane, 2020b) was to set out a broad framework for the family court for the next six months or so (from June to around Xmas 2020 therefore). It was shaped by several interacting factors: a realisation that the impact of Covid-19 was not going to be short-term; backlogs that risked overwhelming the system if unaddressed; an anticipation of more child protection activity as public services, schools particularly, resumed something approaching normality (Bulman, 2020); anxiety about decisions regarding children being indefinitely put back. Widespread adjournment had been appropriate as a short-term fix but that practice now had to be dropped to prevent backlogs building up further. The implications of this were set out starkly as follows:

> 'there will need to be a very radical reduction in the amount of time that the court affords to each hearing. Parties appearing before the court

[64] These are not binding guidance, hence the authors' preference for referring to them as, for example, messages.

> should expect the issues to be limited only to those which it is necessary to determine to dispose of the case, and for oral evidence or oral submissions to be cut down only to that which it is necessary for the court to hear.' (McFarlane, 2020b, p. 11 – emphasis in original).

I recognise the immense pressure that the President was under, but my reaction to this prescription is puzzlement as to what further fat there is to cut from public law hearings, particularly in light of evidence that remote work takes longer and is more exacting.

History shows that any optimism felt in the Summer of 2020 that the worst effects of Covid-19 were behind us was misplaced, as rises across all measures led to further local restrictions and lockdowns, prompting further guidance from the President in The Road Ahead 2021 (MacFarlane, 2021). In this the President saw grounds for hope in the further resources allocated to family justice (the extent of these is not spelt out but reference is made to equipment, staff numbers and judge sitting days). He expressed concerns about the impact on well-being of working long hours and stressed that normal court hours should be adhered to.

Discussion

What have we learnt from the pandemic and what is the future role of technology in the family court?

First, let's imagine for a minute how family justice would have coped if the technologies that enabled remote working had not been developed by March 2020. I expect that it would have been possible for a few cases to proceed face-to-face but the constraints of social distancing, vulnerabilities, travel restrictions, administration and such like would have prevented most of them from being heard. The hypothesis is that family justice would have ground to a halt other than for a few emergency hearings that could be allocated court time, with potentially catastrophic consequences for the welfare of children.

Secondly, family justice survived by adapting. It is accustomed to doing so. The combination of relentless demand and insufficient resources has caused it to feel perpetually beleaguered for the best part of the last decade, with the prevailing narrative from the President down being one of crisis bordering on imminent

collapse. It was tempting to take such talk metaphorically rather than literally, a reflection perhaps of how many in the business felt about their own psychological state, but I wondered whether the pandemic might cause the system to break. Problems had historically crept up on family justice, mutated and stuck around. Covid-19 provided a fresh challenge, arriving like a bolt from the blue, creating disorder, coming under partial control only to break out again, disturbing family justice and the broader child welfare system alike. Actors coped with this, changed how they operated, kept going. There was also a laudable determination to learn on the hoof. Speed was paramount, and the surveys commissioned by the President and delivered at short notice by the NFJO produced learning from colleagues about the challenges and solutions. Resilience, adaptability, building networks of support: these are resources to build on going forward.

Is the technological genie now out of the bottle? Is a shift towards remote working now inevitable? I am doubtful other than in respect of hearings that can be identified as being purely administrative. Many interviewees, judges especially, argue that attended hearings should be the default position. Mediated communication has brought efficiencies, notably improved time management, but comes a poor second to co-presence when trying to gauge veracity, robustness of evidence, affect and when seeking to encourage families to make positive changes. Moreover, it risks accentuating the power differentials, with parents and families less likely than professionals to be able to access the required technology or the private spaces. Time will tell whether Susskind's (2019) confidence that technology can eradicate these barriers is well-founded. For now professionals are justifiably wary. Their willingness to give modernisation a chance in the early 2010s gave way to serious concerns that it undermined welfare and justice, amplified by a deep suspicion that its primary purpose was to save money. A few years later along comes another government reform programme that also promises to facilitate better justice and deliver savings. Moreover, professionals now have personal and collective experiences of working remotely. If they feel that the HMCTS reform programme is being imposed upon them they can counter it with informed arguments. They are less vulnerable to being portrayed as resistant to progress.

The future of online family justice is uncertain. However, two things are clear: the technology as currently established in not consistently good enough to be fit-for-purpose; and improving technology will not of itself sweep all concerns aside. If the HMCTS reform programme is to support family justice and gain the active support of actors in the field, rather than impose top-down solutions in the pursuit of making (further) savings, then it will need to address the social elements of family justice: the conveying of empathy and humanity; enabling parents to understand they are drinking in the last-chance saloon; facilitating negotiations between lawyers; ensuring everyone has equal access to documents and high-quality equipment; helping all concerned to feel that they have been involved in the dispensing of fair justice.

Coda - *Vignette 5 (Case C)*

The final hearing, a hybrid. The parents are in court, together with one lawyer and the judge, everyone else online.

One child went home a few weeks ago, followed by the other. Everything has been agreed between the parties in advance: the threshold document, a working agreement, a supervision order for 12 months. The children's guardian commends the parents for their transparency and engagement with the therapy. The judge says s/he is 'struck by the close relationship between the children and parents and very positive aspects of their upbringing.' Then makes the order as drafted by the lawyers.

This family was in turmoil when it came before the court. It's taken about 15 months and extraordinary amounts of assessment, therapy, labour, disagreement, negotiation and court time to get to this point. Would anyone seriously argue that it wasn't time and money well spent? I reflect on the FJR expostulating about the cost to the public purse of family justice: over a billion pounds a year! I think of all the money thrown at the pandemic, wastefully in some instances, and (it has been alleged) corruptly in others. I reckon investing a fraction of that in society's most vulnerable children is not a bad strategy all things considered.

The hearing lasts barely 20 minutes. After all the prolonged drama of this case the ending feels bathetic but that's good. There is the prospect of stability and security for the children. I foresee many challenges li - how will the children explain what happened to school friends, cousins, future partners, each other, their children? – but they are receiving expert help and there are grounds for optimism.

Chapter 9: Conclusions

Introduction

My purpose has been to examine practice in the public law arm of family justice by conducting an ethnographic study of a court in England, with reference to the modernisation agenda. To the best of my knowledge, this thesis is the first attempt to analyse the interplay of family justice policy and practice through the prism of Complexity and the first ethnography of the standard family court post-modernisation. These are elements of originality that have, I hope, produced fresh insights about the complex work of the family court, and the degree to which it has been let down by policymaking.

This final chapter starts with a setting out of key findings. I then present the implications of these findings for family justice policy. In so doing, I am mindful of the limitations of the study discussed in Chapter Four (one court, small samples, no direct family input, operating remotely) though my conclusions are supported by a good four decades of work in the field. The chapter concludes with reflections on Complexity and my thoughts about future ethnographic studies of the family court.

Key Findings

Modernisation has, in the long run, not served family justice well

Examined through the lens of Complexity, modernisation was a flawed techno-rational response to wicked socio-legal problems. Complex adaptive systems, such as family justice, do not obey the same rules as mechanical objects. They constantly adapt to the challenges they face, brought on by changes within and outside the system, and thus behave in unpredictable ways, and are not readily controlled. Policies are subject to a law of diminishing returns and unintended consequences emerge. Problems multiply and interact over time, and the flaws of long-term inflexible top-down policymaking become exposed.

In light of these observations, Byrne & Callaghan's (2014: p.19) representation of the rational paradigm as being 'limited in its rightness' is apposite, though I am

tempted to add the adverb ‘very’ to that formulation when applying it to modernisation. In arguing the case for rational thinking we could point to case durations initially dropping by half, thus helping family justice to deal with rising demand, but not much else. Have children’s outcomes improved? Is justice fairer? The hope generated by the Family Justice Review (FJR) and enhanced by evaluations has long given way to scepticism.

Case durations are now close to the level they reached pre-modernisation. The statutory timeframe of 26 weeks has proved unworkable in many cases. My observations of hearings identified several reasons why this is so. System insufficiency is one, a problem that has been substantially exacerbated by the pandemic. Other reasons include the inherent complexity of cases and a reluctance to rush a decision that brings significant enduring consequences for the child and family. Interviewees expressed anxiety that the performance indicator is driving practice to the detriment of the child’s welfare. I came to the view that the 26-weeks rule now exerts little influence upon practice in MetroCourt, where it is commonly regarded as a minor irritant rather than a driver of best practice. Followers of the rational paradigm might view practice in MetroCourt unfavourably. An alternative interpretation, drawing on the work of Nonet & Selznick (2001) is to see it as the law in responsive mode, whereby practitioners observe the spirit of the law (to deliver fair justice and help children) rather than passively implement the rules.

Rational policymaking is unresponsive to changed circumstances

In the context of rising case durations and professional doubts about modernisation family justice would benefit from policymaking that is attuned to the shifting landscape and able to respond flexibly. This brings us to another problem with the rational paradigm – how slowly it reacts to policy that has outlived its purpose. The work of Herweg et al (2017) and Baumgartner et al (2017) facilitates understanding of this phenomenon, positing that political attention rapidly wanes as other demands rise to the top of politicians’ agenda, amplifying the tendency of government to impose indefinite, one-size-fits-all solutions and then pay little heed to the consequences. Non-universal services, such as family justice, are particularly vulnerable to remaining low on the list of

government priorities. Thus, over a decade has passed since the FJR reported, during which family justice has changed as a consequence of environmental influences and internal dynamics, while policy has remained static and unresponsive.

The Family Justice Board (FJB) was established to provide a conduit between professionals and government. Had it fulfilled its purpose it might have enabled policymaking to stay abreast of challenges and evolving practices but it has conspicuously failed to do so. The need to convene regular meetings defeated ministers charged with chairing it. Leadership was implicitly delegated to the senior judiciary during Covid-19. Herweg et al (2017) contends that three streams - problem, policy and political – need to coalesce before policy is reviewed. Regarding family justice the first two are in place. There is a widespread view that the law is problematic, and professionals have gathered to propose new policy directions: the CCR and PLWG spring to mind. There is no evidence in the public domain, however, of activity in the political stream.

How families and professionals feel is important

The importance of affect may not be obvious within the formality of the family court. Lawyers do practically all of the talking and do not in general dwell on feelings. Parents are mute unless called upon to give evidence and, in remote hearings, it is hard to interpret their facial expressions and body language. Social workers and children's guardians may be more inclined than lawyers to focus on emotional dimensions of the case in their day-to-day work but they too are, with few exceptions, mute in hearings. Children are barely ever present. When their wishes and feelings are expressed in court – as in the sexually harmful behaviour (SHB) case where the children were described by their lawyer as 'broken' following separation from their parents – I wonder whether the fluidity and complexity of their emotions can be beneficially reduced to one word. Legal submissions and judicial responses tend to be dominated by the more cerebral elements of the work: assessments, analyses, evidence, rules and regulations, statute and case law. The emotional experiences of parties are thus rarely voiced or they are translated into a legal language that barely hints at the depth of feeling.

The suppression of affect is fundamentally, I think, derived from the court being such a formalised legal setting. Strip out the lawyers, maybe the legally-trained judge too, have children of an age and maturity actively present in court, encourage parents to speak for themselves and the emotion would probably come through loud and clear. The management of cases would, I anticipate, become even tougher than it is now. I have wondered though – and this is a speculative thought rather than a finding - whether rationalism feeds into the emotional sterility of the family court as currently configured. The rational paradigm, founded on principles of control, predictability and certainty, does not appear to fit naturally with the messiness of raw emotion.

With regard to Metrocourt, I have tried to show that how families and professionals feel, restrained as it frequently is within hearings, does really matter. Judicial expressions of empathy with, and encouragement to, parents can be understood as acknowledgements of the pain and fear many parents experience and as efforts to make the experience a little less dehumanising. In respect of professionals, Munro (2011 p.91) argues that the emotional impact of working with families where there are child maltreatment concerns determines in part how social workers reason and act. That assertion is congruent with my observations of family justice professional decision-making (for example, a social worker wishing to settle rather than give evidence in court or a local authority sharing the risk attendant with child protection work by making an application to the court). I have also made reference to the weariness and disillusionment many professionals now feel following a decade or unremitting demand, stagnant resources and then a pandemic. Policymakers should, I suggest, be alert to the professional mood when contemplating further reforms, particularly those pertaining to remote working.

The work of the family court is complex

The assumption underpinning the 26-weeks rule was that most care proceedings would fit readily into that timeframe and that few cases would be sufficiently complex to merit an extension. My empirical study, together with a substantial rise in case durations, suggests the opposite is true: complex cases are the norm,

straightforward ones the exception. This fundamental observation indicates that the FJR's conceptualisation of the family court's work was flawed from the outset.

There are many reasons why cases diverge from the FJR's claim that the straightforward case is the norm. Elements of the history are foggy. There is judicial suspicion that the family was not given a fair crack of the whip in pre-proceedings. Cases are dynamic. Parents make improvements during proceedings but it is unclear whether these will be sustained after the threat of removal is past, just as it is unclear whether professional support will endure or dissipate in the face of other demands. Disruptions occur, brought on by events within the immediate family, kinship network and agencies working within the family.

Moreover, the solutions available to the court are messy. Interim removals provide immediate safety but cause distress to children, fragmenting contact with the family, necessitating a change of school. 'Permanent' solutions prove to be temporary as old difficulties resurface or new ones emerge. Kinship carers offer so much to children in many cases, in the short- and long-term, and their commitment is extraordinary – I'm thinking of the extended family member in the spousal murder case who left her country to care for three deeply traumatised children. However, they are sometimes perceived as being too close to the parents to provide the children with the emotional support or safety they need.

Yes, justice is a hybrid – but it's more complex than that

Munby's (2014) description of the contemporary court as a hybrid is pertinent to MetroCourt where aspects of both consensual and adversarial justice were evident. However, to call it 'hybrid' and leave it there would not capture the nuances. Much of the time hearings look like collective enterprises with everybody pushing approximately in the same direction. At such moments, I felt like I was watching a phoney war where the parties were technically in a state of armed conflict but rarely engaged in battle However, actors have different interests, agendas and timeframes, and the balance of power moves back and forth. There are myriad matters that are potentially open to dispute: interim orders, interim placements, the when and where of contact, expert assessments, parental compliance with the safeguarding plan, the actions of the local authority.

Hostilities break out but their purpose is opaque: is it to persuade the judge to rule in their favour there and then or seize the moral high ground in preparation for a bigger scrap further on?

I thought that the primary impulse in borderline cases – driven by the need for all parties to appear reasonable as well as a lack of court time to deal with disputes - was towards settling. Thus, such cases tended to conclude with uneasy compromises between parents who were steered by their lawyers towards confessing their previous failings and vowing to do better henceforth and local authorities who felt impelled to demonstrate their openness to the possibility that, with due support, the parents could provide better care. Both parental and local authority motives for settling are hazy. Are parents genuinely penitent? Does the local authority whole-heartedly support the parents resuming care of their children? Or are both parties heavily coached by lawyers into adopting positions that they think will gain the court's approval? And, if so, does that augur well for their relationship after the proceedings conclude?

Managing cases is tougher than policy would have us believe

The FJR set out a linear view of case management in the family court: the judge is in charge, the Public Law Outline (PLO) is in place to tell everyone what to do and when, the key to the court operating more efficiently and cases concluding on time is for judges to enforce the rules more robustly.

The FJR's verdict substantially underplayed the challenges of managing a complex and dynamic socio-legal system. Parents' experiences of proceedings influence their relationship with the court and child welfare services in future: consequently, they need to be treated with respect, allowed to state their case and afforded a fair hearing. Judges count on the co-operation of lawyers to work together to progress the case, but lawyers are partisans as well as teammates and may go on the attack unexpectedly. The court and all professionals who work in it are under immense pressure, a situation that has been exacerbated by the pandemic. The momentum generated by hearings dispels when they end as attention is drawn to more urgent demands. There are many matters to be resolved during proceedings, some predictable but others not, all of which may be in dispute and require judicial input. The appointment of experts extends

proceedings but there is no obvious other course open to the court when it needs to unpick the varied and complex intra- and inter-psychic matters that appear before it. The Public Law Working Group (PLWG) (2021) suggested social workers should plug the expertise gap: that strikes me as implausible given the profession is, to quote one of my interviewees, so 'defended and defensive and embattled and stuck.'

The pandemic disturbed a system that was already struggling

The pandemic disrupted the work of the family court and the child protection system that supports it. Traditionally the court has been predicated on co-presence: everybody gathers in the same space at the same time. At very short notice remote working was necessitated. The technology was unfit for purpose in March 2020, improved but was still erratic two years on. Contact centres closed, experts interviewed parents remotely (and their reports were deemed by interviewees to have suffered accordingly), professionals, families and foster carers fell ill. In that context it is not surprising that there was an acceleration of a pre-pandemic trend of s31 case durations rising.

Disorder is not, according to Complexity, inherently bad. It can boost resilience, adaptability and learning from experience, qualities that I witnessed in MetroCourt. The pandemic has taught us something important about the nature of family justice practice: it is flexible, resourceful, committed, able to roll with the punches. A surfeit of disorder is, however, problematic as it threatens system stability. Family justice has had one upheaval after another - modernisation and austerity, rising demand, then the shock of Covid-19. The last of these is distinguishable from previous disruptions by the speed with which it hit and the extent to which it changed the way the court operated. It has created disarray which will not be swiftly cleared up. There are chock-full judicial calendars, backlogs, anxieties that families have become further disadvantaged and professionals whose psychological well-being has taken a serious hit. Recovery is likely to be slow and hard.

I move now to the implications for policymaking.

Policy Implications

The function of the family court (revisited)

In Chapter Five I discussed the function of the family court and questioned whether it is always the optimal place for handling concerns of significant harm to children, and a care application invariably the right mechanism for resolving the problems of so many families. The question is, of course, concerned with demand and is therefore brought into sharper relief by the pandemic. Any hope that demand will ease post-pandemic will fade if, as seems likely, the current perfect storm of energy crisis, cost of living crisis and further austerity measures pushes more families into hardship and leaves supportive services less able to provide help. Many in family justice consider the last couple of years to have been dreadful and with good cause: I fear they may need to brace themselves for worse. I worry about the psychological well-being of professionals involved in public law work and I worry that their resilience may count against them post-pandemic. The wise policymaker will be alert to the perils of assuming that practitioners will absorb indefinitely all that is thrown at them.

However, as I have argued, there are other grounds for wishing that fewer families might enter proceedings. It puts fragile parents through a very stressful experience: yes, it undoubtedly pushes some parents to face their problems, but it also causes stigma, humiliation and deep anxiety. It may gain compliance but often, I suspect, at the expense of trust and well-being. A second is that the court has no magic solutions: as I have shown the fixes it finds are commonly temporary and formed of compromises. A third concerns motives as some care applications are driven by the local authority's wish to gain parental acquiescence rather than a belief that the child must be removed. A fourth is to recognise that many families that pass through the court experience multiple inequalities (to the detriment of their self-worth, physical and mental health) and that the state's moral duty should be to provide extensive support, as happens in some other countries. Finally, there is our inability, or unwillingness, to distinguish between cases that need to go before a court and those that do not, a trend that is born of decades of risk-averse practice and exacerbated by austerity.

Had I been asked the question I posed in Chapter Five , and repeated at the start of this section, three years ago, I would have likely given a neutral answer. No longer. I have come to the firm view that too many families are being sent to court for want of comprehensive, confident and properly-funded services that are able to respond flexibly to families' many difficulties. More families would, I believe, be spared court appearances if provided with tailored packages of help pre- and post-proceedings.

There is no simple answer to the wicked problem of excessive use of the family court. A policymaker intent on resolving the problem might, however, want to start by engaging stakeholders in agreeing a crisper definition of the function of the family court, one that leans towards manifestly harmful parenting and away from families that are buckling under the weight of chronic social and health problems. S/he would then need to ensure that the child welfare system is equipped to undertake the demanding business of supporting families, failing which demand on the court seems unlikely to fall. I address this matter now.

Reforming child welfare

As I drafted this chapter the Independent Review of Children's Social Care produced its final report (MacAlister, 2022) – the latest attempt to reset interventions in favour of helping families and keeping children in families where safe to do so. Its proposals include: multi-disciplinary teams based in community hubs; a social worker to join the team when concerns of significant harm emerge; a rebalancing of spending in favour of support. The report argues that investing in these measures now will prevent the number of children looked after rising yet further and lead to savings.

The review's recommendations are radical in taking the delivery of family support from social care and handing it to multi-disciplinary community teams, and thereby focussing the social work role more narrowly on protection. Time will tell whether this review has more sustained traction than prior efforts. It will fall at the first hurdle if there is no political will to implement, and fund, the changes. The current economic context – an impending autumn 2022 statement promising further cuts to services that are already close to breaking point - is disheartening. One wonders whether the 'caring professions' will have the energy to undertake

stressful work in such circumstances. Then there is the challenge of changing professional cultures, child welfare having long been dominated by the monitoring of families, mitigation of risk and coercive interventions. Another hurdle, identified by my study, might be whether support teams would have the authority that the court holds to motivate parents, to get them to understand the need to make some changes. Will the addition of a social worker to the multi-disciplinary family help team perform that function or will families continue to find themselves on the 'conveyer belt into the court arena' (Trowler, 2018: p.9)?

More robust family support would, if successful, raise judicial confidence in work done before proceedings. It might thereby, as an ancillary benefit, speed up proceedings. It would also lead to fewer care applications and fewer removals of children from parental care. Case A – involving two care applications, both resulting in supervision orders – is an example of families that I believe might be kept out of court and thus spared anxiety and stress. Case E – where the elder sibling was willing to step in and care for the children – is another. There would still be a role for the family court but it would be less concerned with patching up differences between families and local authority, and more directed at situations where the temporary and/or permanent separation of children from their parents is genuinely in play.

Stimulating recovery (a Complexity perspective)

I previously provided a retrospective Complexity-influenced analysis of the modernisation of family justice. With the pandemic now apparently less menacing, how can Complexity be applied to the challenge of stimulating family justice recovery? A useful starting point might be to remind ourselves that, unlike the rational model, it does not gift us a clear bullet-point list of steps that should be taken. This is in part a consequence of Complexity being a framework of theories rather than one unified theory. However, it would also be hard to square its core theoretical concepts such as emergence and uncertainty with unequivocal statements of how things should now be done. Caution is required to ensure that, in making the case that Complexity has something to offer, one does not betray its fundamental positions (Cairney & Geyer 2015b: p. 461), one of which is that there are no quick fixes to messy problems. The strength of the

theory resides more in its capacity to provide insights into what is going on and why (Innes & Booher 2010) than it does in prescribing how an organisation or system should be run (Cilliers 2016). Therefore, considering how a complex adaptive system (CAS) like family justice should recover from the impact of Covid-19 requires humility and an acknowledgement that ideas influenced by Complexity are duly tentative.

Munro (2011) proposed, with specific reference to child protection social work, some principles to guide reform. These included: creating a learning culture; improving practitioner knowledge and skills; listening to the front line; interrogating what lies behind performance indicators (rather than assuming they unambiguously demonstrate good or poor practice); obtaining continuous stakeholder feedback; and encouraging local decision-making. With Munro's work in mind, alongside the lessons derived from other Complexity-influenced texts, these are some suggested principles to guide policymakers and those charged with driving reform:

1. Engage professionals actively in determining how family justice recuperates, not as an event as happened with the FJR but as a sustained process. When accounts of how family justice survived the pandemic are published, I expect them to highlight the resilience and ability of professionals to adapt in embracing remote hearings at very short notice. I've personally observed such phenomena while conducting this study. Having kept family justice afloat professionals may be disinclined to accept government saying 'thank you for your sterling efforts…we'll take over from here'. Many professionals are drained and cross. Their unwavering cooperation should not be assumed. Note Ryan et al's (2021: p.42) warning on this matter: 'Goodwill among professionals, which is what the family court system has expected and relied on for many years, is now entirely exhausted.'
2. Create a culture of continuous learning. Important work has already been undertaken in generating knowledge from family justice during the pandemic including the various Nuffield Family Justice Observatory (NFJO) studies. This needs to continue to ensure that professionals' experiences of finding solutions to thorny problems are maximised moving forward. Experiences,

perspectives, successes and failures need to be captured, disseminated and debated.

3. Encourage local leaders to try things out. This nods to two Complexity principles. One is the importance of context – what works in one time and place does not automatically work in another (Ansell & Geyer 2017). The second is the principle of pragmatism as advocated by, for example, Geyer & Rihani (2010) in the belief that trial-and-error makes good use of professional experience and problem-solving skills. In this regard much can be gained from experiences in other public services such as the success of the vaccination campaign which drew on local resources compared to the problems of track-and-trace that did not (Charles & Ewbank, 2021).
4. Provide leadership, make plans and set policy but do so lightly, tempering these responsibilities with support to professionals to adapt hierarchical injunctions to make them work in the environments in which they operate. Chapman (2004: p. 12) expressed his exasperation with those in authority – governments, policymakers, managers – who conflate power with wisdom and thereby 'know best'. In so doing they risk blinding themselves to their own limitations and to others' abilities. Complexity suggests governance is at its strongest when it is flexible and decentralised (Ruhl, 2008) and when leaders can wear various hats – mediator, advocate and guide as well as commander (De Roo, 2010).
5. Do not make use of experiences of remote working by seeking to accelerate the HMCTS reform programme. Professions have had their values affronted by being obliged to deliver family justice less fairly than was the case pre-pandemic. They will not take kindly to the imposition of remote justice, especially if they suspect the underlying motive to be economies (Exall, 2019).
6. Facilitate an informed debate about the future of the 26-weeks rule. Performance indicators are a crude and flawed response to the problems of complex systems. As the time taken to conclude proceedings grew pre-pandemic, and has grown further over the past two years, it is unclear whether the rule now holds significance other than symbolic. An evidence-based decision as to its retention in/removal from statute, ideally commissioned by government as it only has the power to amend the law, feels overdue.

Henceforth a modified type of policymaking is required

The short-term benefits of modernisation are a dim memory. Hopes that the cake could be both had (shorter proceedings) and eaten (improved children's outcomes) have long given way to widespread concerns that the reforms of the FJR are now unproductive, and in some instances work against fair justice and children's interests. At some unknown point modernisation will be subject to government appraisal. The temptation will be, in line with the rational paradigm and history, to conduct another review, make a grand plan, then consider it job done for a decade or more. That temptation should be resisted, as should the urge to double-down on modernisation in an effort to enforce compliance: more prescription, tighter monitoring, less judicial discretion, a higher threshold still for expert reports, intensive training for judges in case management.

What might a modified type of policymaking look like? To answer that I imagine a future meeting and describe how it might proceed if it were less beholden to rationalism and better attuned to the principles of Complexity:

- The political stream (Herweg et al, 2017) has awoken from its extended slumber and the government is taking an interest in family justice. One of several gatherings between government and stakeholders is in place. The public law reforms introduced by the FJR are under discussion as part of a wider dialogue about the myriad challenges of family justice, what its core purpose should be and how progress can be achieved.
- Professionals, mindful of their achievements in adapting to one challenge after another, make it plain that they will not take kindly to being told what to do. A minister, picking up the mood, asks attendees what they think government can do to enable them to deliver the optimal service.
- Different parties have different responses. But there are areas of broad agreement. Modernisation has encouraged mass processing, impeded the court's capacity to respond flexibly to the unique qualities of each case, offended the values of professionals, diluted some of the humanity. Introducing more regulation will make things worse.
- There is some anxiety about amending existing regulation: a 'postcode lottery' might follow. 'Is that really such a bad thing?' asks somebody, arguing that

the challenges courts face vary by location and over time. Others take up the theme. Examples are cited of courts taking the initiative, setting up pilots, sharing their successes and failures with peers who have then run with the idea. The merits of upstream policymaking are recognised. Homogeneity, imposed downstream, is not all it is cracked up to be. Local innovation is reframed as desirable rather than deviance from some arbitrary norm.

- It is acknowledged that the 26-weeks rule is now honoured more in the breach than the observance and that meeting it does not act as a reliable proxy for better justice and outcomes. The weight of opinion favours its removal from the statute. However, there is acceptance that doing that, if the government is so minded, will bring unforeseen consequences. An attendee argues that monitoring the impact of legislative change will be essential but that it should not be restricted to measuring case durations. It is time to let go of the discredited idea that they alone tell us how well/badly we're doing. A discussion ensues of other evidence that needs to be captured – for example professional and family experiences, what happens post-proceedings – and how it might be done.
- The gathering concludes with an agreement that policy cannot be set now and then receive little attention thereafter. All of the collective wisdom present in the room will not devise solutions that endure a decade or more. New challenges will emerge. Practice will not stand still. The idea behind the FJB – that there should be a body formed of government and stakeholders charged with establishing a strong line of communication between the two, evaluating progress and driving change – is seen as sound even if its performance was lamentable. There is a shared commitment to establishing such a forum that will deliver against its terms of reference.

Holistic discussions, professionals recognising their role in creating policy, ministerial humility and consistency, a tacit political acknowledgement of the need adequately to fund family justice, loosening the reins of centralised power, engagement of the political stream and more – the idea that all of these might happen at once is probably fanciful. The imaginary scenario is important, however, in demonstrating the kind of contribution Complexity thinking can make to shaping public policy. And, in setting out that scenario, I am not asking for the

world: essentially, I am just urging us all to start thinking a little more outside the rational paradigm box.

Technology must not be forced through

Making extensive use of technology in the family court will be attractive to a government that is, as I write, signalling that a further round of cuts to public services is to follow. Selective use of the evidence would point to efficiencies and economies derived from online hearings. Conversely, a detailed scrutiny of the research (Ryan et al, 2020a, 2020b; Byrom, 2020), confirmed by my study, shows that the technology is currently suitable only for administrative hearings, and that improving its quality will not resolve every problem. We cannot allow the current social disparities between professionals and families (education, class, wealth) to grow even wider as the first group gets the best equipment while the latter wanders round the house and garden trying to get a signal on an ancient mobile or relies on a friend to top up the credit on their phone. There is then the problem of what is lost by using mediated communication: the capacity of the judge to 'read' people; the conveying of empathy and humanity; the exchanges between parent and lawyer; the impromptu negotiations between lawyers. Technology reshapes how actors interact and communicate with each other but not necessarily for the better; indeed, as things stand the disadvantages for family justice substantially outweigh the benefits. That being the case, unless technology can develop, as Susskind (2019) proposes, to the point that it can enable remote communications of the same order as those that take place in the same physical space, then I do not see it making the leap from, say, disputes about an unpaid plumber's invoice to the weightier matter of whether a child should be removed from parental care.

Seeking to impose the use of technology against robust evidence and professional objections would be a grievous error. The HMCTS reform programme has not been well received to date, professionals are suspicious of the motivations and methods of policymakers and they have evidence to back their concerns about technology. I do not envisage them acquiescing passively to government decree.

That concludes my setting out of policy implications. I conclude with reflections on Complexity and future research.

Reflections on Complexity

In Chapter One I explained how I was drawn to Complexity initially by my familiarity with working systemically and subsequently by its extensive application to the social sciences, including child welfare. I have used it throughout the thesis to analyse family justice policy and practice, and to explore the congruence and tensions between the two, and regard it as having been indispensable. Factor Complexity out of the thesis and there would be a much weaker understanding and articulation of core themes. Could I have satisfactorily explained, for instance, why policy is often seen by practitioners as an impediment to good practice without reference to Complexity? Or how mass processing must be tempered by a willingness to embrace the unique qualities of each case? Or how the emergent properties of complex systems should encourage policymakers and managers alike to recognise the limits of their power to influence and the merit of humility?

I said in Chapter Two that like Chia (2011) I sometimes felt confounded by Complexity. That feeling is traceable, I think, to two things. The first is the sheer size and diversity of theories and applications; a strength naturally but also a potential weakness when trying to nail down precisely what Complexity is. The second is that Complexity is a rich analytic framework but it offers no neat prescriptions. It does propose more pragmatism, trial-and-error, constant learning and delegated authority and I have made use of these particularly when discussing family justice's recovery from the pandemic, and then above in this chapter, but I am mindful of Cilliers (2016: p.71) comment that Complexity provides 'a general set of guidelines or constraints…(it) cannot help us to take in specific positions.' That has been more than good enough now for my purposes. However, if it is to gain more influence in policymaking it will need to expand its empirical evidence base in the social sciences and make further incursions into the mainstream.

Future research

The unique selling point of ethnography is the unfiltered access it gives the researcher to the action and its capacity to generate thick description (Geertz,

1973). By observing interactions ‘in real time’ the ethnographer has the material and license to tell vivid stories, bring the family court to life, explore the discrepancies between the quotidian lexicon (adversarial justice, bread-and-butter cases) and the experience of practitioners, peer through the curtain of rule-governed and performative behaviours and engage readers to the point that they might sometimes feel themselves to have been present thereby experiencing all of the attendant sadness, poignancy, shock, relief and humour. The most memorable and telling tales contained in Chapters Five to Eight are, by my reckoning, the product of ethnography, inter alia: the stunned expression on the faces of the parents in the SHB case; the interpreter trying to explain the work of the family court to parents at a railway station; the change in judicial tone of voice when speaking to parents; the local authority lawyer being dressed down and, as predicted by an interviewee, giving every impression of indifference; the language of contrition and seeking forgiveness; the parent visible from the nose up, and then the chin down; the judge’s sarcasm as the technology fails yet again. If we’re interested in what happens within the family court, in all of its drama, gravity, surprise and occasional absurdity, then ethnography deserves to stand alongside established qualitative methods utilised in family justice research.

Persuading the many stakeholders that you will not misuse the privilege they grant you can be hard, and understandably so. That is the trade-off, and it may be one reason why there have been relatively few ethnographies.

I know from informal discussions that there is an appetite for more ethnographies of the family court. I hope further studies follow, not just because of the contributions to knowledge that will follow but because I believe family justice will benefit from becoming more open. These are embryonic ideas for future ethnographies:

- A similar study to mine but conducted in a different court and with the researcher(s) physically present in court. This would, I speculate, produce different findings and analyses.
- A micro study of one or two cases that captures the perspectives of all actors throughout proceedings. (I think it might be possible to get round the concerns about justice being compromised if this were undertaken by a team with

prohibitions around researchers sharing data with each other while the case is open.)

- A comparative study of an English (or Welsh) court and a family court in another country, thus developing the literature discussed in Chapter 3 that investigates the ethos and practice of different jurisdictions.
- A study of the Family Drug & Alcohol Court in action. This might develop further my and others' reflections on adversarial and inquisitorial modes of dispensing justice.
- A study of private law cases.

Whatever shape future ethnographies take, I hope that they capture family experiences. I have argued at various points that their perceptions really matter, not just because being treated respectfully and humanely is important in that moment of stress and humiliation, but because that may also set the tone for the family's relationship with professionals in future. Picking up family responses before, during and after hearings should produce very rich data. My study, together with Pearce et al's research (2011) in which they shadowed parents' lawyers might provide a useful precedent of how to gain access ethically. I note that their requests to observe were rarely refused, just as my presence was only refused once. I think many families will want to talk about what being drawn into care proceedings is like for them, provided they are handled sensitively. Their voices should be heard.

Appendix A: Family Court structures and actors

Structures, the judiciary and appeals

Prior to April 2014 the Family Court had three tiers (in ascending order of hierarchy): Family Proceedings (in which most cases started), County and High Court. In April 2014 the single Family Court was introduced with the diverse levels of judiciary sitting within it (also in ascending order): Magistrate, District, Circuit and High Court Judge. Therefore, the requirement to transfer cases between the diverse levels of court, in response to various criteria relating to the complexity of the case, was replaced by a process of re-allocation within the same court. A minority of cases, for example wardship (where the court makes decisions for a child that fall outside of the scope of the Children Act, 1989) and some international cases, fall under the inherent jurisdiction of the High Court i.e. are heard there rather than in the Family Court.

Magistrates are lay persons and generally sit in a panel of two or three, supported by a Legal Adviser. The other tiers of judiciary are trained and experienced lawyers.

The judgments made by the Family Court are determined by case law as well as legislation. Decisions of the Court of Appeal set precedents for lower courts. Also, legislation must be applied in line with the Human Rights Act, 1998.

If an aggrieved party wishes to appeal against a court decision they must establish the grounds for appeal, demonstrating that there was a mistake of law or an erroneous application of the law to that case. Appeals against decisions made by the lower tiers of the judiciary may be heard by more senior judges in the Family Court. Appeals concerning the judgments of Circuit and High Court judges are heard in the Court of Appeal.

Parties, professionals and roles

The local authority that makes the care or supervision application under s31 of the Children Act, 1989, is automatically made a party, as is the child, the child's mother and the child's father if he holds parental responsibility or is made a party by the court. Others – generally family members – may be made a party. Parties in s31 cases have rights to be represented by a lawyer (though, depending on the application and the party's status, they may not be entitled to non-means tested funding), to attend hearings and to receive the court 'bundle' of papers (position statements, reports etc).

Children are represented by the 'tandem model' of Children's Guardian and solicitor. Children very rarely attend court though they may send a letter to the judge or ask to meet with him/her. The Children's Guardian (employed by Cafcass but appointed to a case by a judge) instructs the solicitor unless the child is competent to instruct the solicitor him/herself and wishes to do so. Other parties are likely to be represented by a lawyer (though note, in Chapter 6 of the thesis, various instances of non-representation). The Official Solicitor may become involved if a parent is incapable of understanding proceedings or instructing a solicitor, in which case the Official Solicitor instructs the lawyer.

Thus, in a hearing of a public law case, one would normally expect to see the following:

- Mother.
- Father – sometimes more than one if there is more than one child subject to the application.
- Others members of the kinship network – family and friends – that have been made a party.
- A social worker (and perhaps a line manager too) representing the local authority that has made the application.
- A Children's Guardian.
- Lawyers for each of the above: they will make submissions to the court in line with clients' instructions. Their clients very rarely address the court directly unless invited to do so by the court, or giving evidence. The lawyers may be solicitors and/or barristers. The former conducts the direct work with parties and has a 'right of audience' in the Family Court. The latter tend to become involved in complex cases where there is a trial (i.e. parents, social workers and others give evidence and are subject to cross-examination).
- A Judge (or panel of magistrates) whose key responsibilities are to make decisions and ensure the case is conducted in a manner that is consistent with legislation and court rules.

Others, such as interpreters, may be present in Court. Experts may also be present but, as above, only if giving evidence.

Appendix B: Ethics Approval

Lancaster University

Department: Sociology
Applicant: Richard Green
Supervisor: Professor Karen Broadhurst
Ethics Committee Reference: FL19203

27th October 2020

Dear Richard

Thank you for submitting your application and additional information for *Family Justice in the context of Covid-19: an English family court case study (working title).* The information you provided has been reviewed by members of the Faculty of Arts and Social Sciences and Lancaster Management School Research Ethics Committee and I can confirm that approval has been granted for this project.

As principal investigator your responsibilities include:

- ensuring that (where applicable) all the necessary legal and regulatory requirements in order to conduct the research are met, and the necessary licenses and approvals have been obtained;
- reporting any ethics-related issues that occur during the course of the research or arising from the research (e.g. unforeseen ethical issues, complaints about the conduct of the research, adverse reactions such as extreme distress) to the Research Ethics Officer;
- submitting details of proposed substantive amendments to the protocol to the Research Ethics Officer for approval.

* **If you need to make an amendment to your application, including due to Covid-19 restrictions that may call for changes to data collection methods, before you submit your amendment application to the committee for review, we recommend that you refer to the university guidance** here **and ethics committee guidance** here.

Please do not hesitate to contact me if you require further information about this.

Kind regards,

Debbie

Debbie Knight | Research Ethics Officer
Secretary FASS & LUMS Research Ethics Committee & UREC | Research and Enterprise Services
Lancaster University | Room A04, Bailrigg |

Contact me on Teams

https://www.lancaster.ac.uk/Research Ethics

Appendix C: Information for Families

Research Study in MetroCourt

I am doing a small research study in MetroCourt during 2021. The research is into the impact of Covid-19 on care proceedings, to understand how family justice has adapted to the crisis. It forms part of a degree I am undertaking at the University of Lancaster. The research has been approved by the University Ethics Committee and by the President of the Family Division.

With the judge's permission I will be observing some hearings, including one in which you will be involved. To observe I will either be present in court or connected remotely through video.

I will:

- Take no part in the hearing. I am there only to watch. I will not speak to family members nor any professional other than the judge.
- Take hand-written notes which I will later type up to be stored securely on the university server. I will destroy the hand-written notes at this point.
- Keep no identifying information about anyone – families or professionals – involved in the hearings. Families will be given a number – 1, 2, 3 etc – their names will not be used.
- Make sure that no information I use in any report or publication identifies anyone. The court will not be named, nor will the local authority, nor will any reference be made to details of the family or hearing that might allow identification.

My typed notes will be kept on the university server for ten years. Other researchers may apply to the university to have access to this information. As above, all information will be anonymised and will not allow your family to be identified.

I do not want my observation to cause you discomfort or add to the stress that you are going through. If you have concerns please contact me directly or ask your lawyer to do so. My contact details are below. If you do not want me to observe your family's hearing then I shall not watch it.

My contact email: r.green9@lancaster.ac.uk

If you have any concerns or complaints that you wish to discuss with a person who is not directly involved in the research, you can also contact: Professor Imogen Tyler, email: i.tyler@lancaster.ac.uk phone: 01524 594095, postal address: Sociology, Bowland College, Lancaster University, Lancaster, LA1 4YT.

For further information about how Lancaster University processes personal data for research purposes and your data rights please visit our webpage: www.lancaster.ac.uk/research/data-protection

Thank you for taking the time to read this.

Richard Green

Appendix D: Invitation to Professional Interviewees

Research Study - Richard Green: PhD student

I am writing to invite you to be interviewed by me in connection with my research study *Family Justice in the context of Covid-19: an English family court case study* that forms part of my PHD undertaken at the University of Lancaster. My principal supervisor is Professor Karen Broadhurst.

I am inviting professionals active in care/supervision proceedings to be interviewed – social workers, lawyers, judges and children's guardians.

The interview will be semi-structured. I'm interested in your experiences/views of the family court during the pandemic – what has been learnt for example – but also more broadly what you think works and doesn't work in the hearing of public law cases.

I will with, your consent, record our interview on MS Teams (or similar). I will transcribe it (and provide a copy to you upon request) and then wipe the record. You will be ascribed a pseudonym based on your profession and no identifying data will be presented in the thesis or other publication.

My transcription will be kept on the university server for ten years. Other researchers may apply to the university to have access to this information.

You are participating in this study voluntarily. You are free to withdraw your participation before, during and up to two weeks after the interview. You are free to refuse to answer any question.

If you have any questions please email me - r.green9@lancaster.ac.uk - or ring me on 07305 413158.

If you have any concerns or complaints that you wish to discuss with a person who is not directly involved in the research, you can also contact: Professor Imogen Tyler, email: i.tyler@lancaster.ac.uk **phone: 01524 594095,**

postal address: Sociology, Bowland College, Lancaster University, Lancaster, LA1 4YT.

For further information about how Lancaster University processes personal data for research purposes and your data rights please visit our webpage: www.lancaster.ac.uk/research/data-protection

Appendix E: Interview Guide

1. What are the biggest challenges facing public law proceedings?
2. IRO public law work, what works well? What is problematic?
3. Is there such a thing as a straightforward case?
4. A lot of matters seem to be decided by consent – is that correct? If so, is it a good or bad thing?
5. One of the criticisms is that the court is operating to a parent act – is that fair?
6. What are the challenges of case management? What is working well?
7. In the cases I've observed there is at least one expert commissioned in practically every case? Am I gaining an accurate impression? If so, why are expert assessments commissioned so often?
8. Do experts help?
9. Is there a gap between what the court needs and many local authority social workers can provide?
10. IRO the statutory timeframe, I am finding that there's a constant sense of urgency but the timeframe is commonly unrealistic – is that fair and, if so, why do you think cases are extending beyond the timeframe?
11. Covid – what has it taught us? What should we keep? What leads you to feel optimistic and/or pessimistic?

Appendix F: Second draft codes

	Is FJ adversarial?
AVS	Adversarial. What is contested?
CNS	Consensual. What is done by consent (or lack of opposition)
CHP	Chipping away, by parents, at the LA's case, competence or fairness.
RSN	Reasonable, parents being portrayed as helping the LA to fulfil its functions and/or the court to promote the child's welfare.
NOREP	Parents or other family members unrepresented
	Complexities
AMG	Ambiguities – things that are unclear, stubbornly resist being pinned down.
C&C	Complications and Complexities
CHC	Changing circumstances – things that shift in the course of the case or even in a hearing, reflecting the dynamic nature of cases.
UH	Urgent hearings, specifically the challenges these pose for the court
WP	Wicked problems – where the solving of a problem causes or risks causing another problem. Conflicts between welfare matters.
KNS	Kinship carers or connected persons - where the extended in family or others step in offering to take the child on a temporary/permanent basis. Illustrating some of the dilemmas.
	Practice meets policy
DLY	Delay – things that hold the court up
UGN	Palpable sense of urgency, including occasions when this process feels forced.
CFS	Confusions – a lack of clarity re what's been submitted or read. Late filing. Factual inaccuracies.
ASM	Assessments done in-house or already completed in train before application
EXPT	Expert assessments agreed by the court during proceedings
CNG	Court's reliance on children's guardian: examples of the CG facilitating or failing to facilitate the work of the court.
	Judging
JDM	Determinations made by judges
ORCH	Case management – conducting the orchestra
HDM	How it's done matters: fairness, explaining thinking & dilemmas, ensuring parental participation, dealing with the unrepresented, working pragmatically e.g. with interpreters to that end.
SCL	Social interaction – when the formality drops away either with lawyers or families.
RCP	Restricted court powers – the constraints upon the court
C-19	Ways in which the pandemic impacts on proceedings
TCH	Technology – examples of it helping or hindering the court's work

Abbreviations

Family Justice

Cafcass – Children and Family Court Advisory and Support Service

CCR – Care Crisis Review

DFJ – Designated Family Judge

FDAC – Family Drug & Alcohol Court

FGC – Family Group Conference

FJB – Family Justice Board

FJR – Family Justice Review

HMCTS – HM Courts & Tribunals Service

ICO – Interim Care Order

LAA – Legal Aid Agency

NFJO – Nuffield Family Justice Observatory

NSPCC – National Society for the Prevention of Cruelty to Children

Ofsted – Office for Standards in Education, Children's Services and Skills

PLO – Public Law Outline

PLWG – Public Law Working Group

President – President of the Family Division

SGO – Special Guardianship Order

SHB – Sexually Harmful Behaviour

Complexity

CAS – Complex Adaptive System

MSF – Multiple Streams Framework

PET – Punctuated Equilibrium Theory

Other

CADQAS - Computer-aided Qualitative Data Assisted Software.

References

Allen, P. & Boulton, J. (2011) Complexity and limits to knowledge: the importance of uncertainty. In: Allen, P., Maguire, S. & McKelvey, B. (eds.) *The Sage handbook of complexity and management*. London, Sage, pp. 164-181.

Alrouh, B., Broadhurst, K., Cusworth, L., Griffiths, L., Johnson, R., Akbari, A. & Ford, D. (2019) *Born into care: new-borns and infants in care proceedings in Wales.* Nuffield. Available from: Born into care: newborns and infants in care proceedings in Wales - Nuffield Family Justice Observatory (nuffieldfjo.org.uk) (Accessed 8 March 2021)

Ansell, C. & Geyer, R. (2017) 'Pragmatic complexity' a new foundation for moving beyond 'evidence-based policy making'? *Policy Studies*. 38 (2),149-167. DOI: 10.1080/01442872.2016.1219033

Ashley, C., Johnstone, J. & Hall, J. (2020) *Kinship carers' experiences during the coronavirus crisis.* Family Rights Group. Available from: Kinship_carers_experiences_report.pdf (frg.org.uk) (Accessed 26 May 2020)

Astill, S. & Cairney, P. (2015) Complexity theory and political science: do new theories require new methods? In: Geyer, R. & Cairney, P. (eds.) *Handbook on complexity and public policy*. Cheltenham, Edward Elgar Publishing, pp. 131-149.

Bainham, A. (2013) Private and public children law: an under-explored relationship. *Child and Family Law Quarterly*. 25 (2) 138-158.

Baginsky, M. & Manthorpe, J. (2020) *Managing through Covid-19: the experiences of children's social care in 15 English local authorities.* NIHR Policy Research Unit in Health and Social Care Workforce, The Policy Institute, King's College London. Available from: The impact of COVID-19 on Children's Social Care in England - Research Portal, King's College, London (kcl.ac.uk) (Accessed 27 September 2020)

Bansal, P., Smith, W. & Vaara, E. (2018) New Ways of Seeing through Qualitative Research. *Academy of Management Journal*. 1189-1195. hal-02276705.

BASW (2018) *80-20 Campaign: how much 'direct' time do social workers spend with children and families?* Available from:

https://www.basw.co.uk/system/files/resources/FINAL%2080-20%20report.pdf (Accessed 22 April 2020)

Baumgartner, F., Jones, B. & Mortensen, P. (2017) Punctuated Equilibrium Theory: explaining stability and change in public policymaking. In: Weible, C. & Sabatier, P. (eds) *Theories of the Policy Process.* 4th edition. New York, Routledge, pp. 55–101.

Beckett, C. (2001) Children who wait for courts: legal delays in care proceedings. *The British Journal of Social Work*. 31. (2) 317-323.

Beckett, C., Dickens, J. & Bailey, S (2016) *Outcomes for children of shorter court decision-making processes: A follow-up study of the tri-borough care proceedings pilot.* University of East Anglia. Available from: https://ueaeprints.uea.ac.uk/id/eprint/62005/1/Tri_borough_outcomes_report_October_2016_UEA.docx.pdf (Accessed 5 May 2020)

Beckett, C., Dickens, J. & Bailey, S (2014) *Concluding care proceedings within 26 weeks: messages from the evaluation of the tri-borough care proceedings pilot.* University of East Anglia. Available from: http://www.uea.ac.uk/documents/3437903/0/Triboro-Report.pdf/3ca637ea-543e-4354-869e-40bef566c021 (Accessed 5 May 2020)

Beckett, C., McKeigue, B. & Taylor, H. (2007) Coming to conclusions: social workers' perceptions of the decision-making process in care proceedings. *Child and Family Social Work* (12) 54-63. DOI:10.1111/j.1365-2206.2006.00437.x

Bedston, S., Philip, G., Youansamouth, L., Clifton, J., Broadhurst, K. Brandon, M. & Hu, Y. (2019) Linked lives: gender, family relations and recurrent care proceedings in England. *Children and Youth Services Review.* 105 DOI: 10.1016/j.childyouth.2019.104392 (Accessed 7 February 2020)

Bellamy, C. (2020) *The 'secret' family court: fact or fiction?* Bath. Bath Publishing.

Berrick, J., Dickens, J., Pösö, T. & Skivenes, M (2015) Time, institutional support, and quality of decision-making in child protection care orders: a cross-country analysis. *Journal of European Social Policy.* (25) 366-378. DOI: 10.1177/0958928715594540.

Bevan, G. & Hood, C. (2006). What's measured is what matters: targets and gaming in the English public health care system. *Public Administration,* 84 (3) 517-538.

Boddy, J. (2019) Troubling meanings of "family" for young people who have been in care: from policy to lived experience. *Journal of Family Issues*, 40 (16) 2239-2263. ISSN 0192- 513X

Boddy, J., Bowyer, S., Godar, R., Hale, C., Kearney, J., Preston, O., Wheeler, B. & Wilkinson, J. (2020). *Evaluation of Pause*. Department for Education. Available from: Evaluation of Pause (sussex.ac.uk) (Accessed 24 May 2022)

Boddy, J. & Wheeler, B. (2020) Recognition and justice? Conceptualising support for women whose children are in care or adopted. *Societies* 10. (4) a96 1-21. ISSN 2075-4698

Boden, D. & Molotch, H. (1994) The compulsion of proximity. In Friedland, R. & Boden, D. (eds.) *NowHere: space, time and modernity.* California, University of California Press, pp. 257-286.

Bostock, L., Forrester, D., Patrizo, L., Godfrey, T. & Zonouzi, M. with Antonopoulou, V., Bird, H. & Tinarwo, M. (2017) *Scaling and deepening the Reclaiming Social Work model*: *evaluation report.* Children's Social Care Innovation Programme Evaluation Report 45. Available from: https://www.gov.uk/government/publications/scaling-and-deepening-the-reclaiming-social-work-model (Accessed 4 December 2019)

Bovaird, T. (2012) Attributing outcomes to social policy interventions – 'Gold Standard' or 'Fool's Gold' in public policy and management? *Social Policy & Administration,* 48, 1-23. DOI:10.1111/j.1467-9515.2012.00869.x

Bovaird, T. (2008) Emergent Strategic Management and Planning Mechanisms in Complex Adaptive Systems. *Public Management Review*. 10 (3) 319-340 DOI: 10.1080/14719030802002741

Bovaird, T. & Kenny, R. (2015) Managing complex adaptive systems to improve public outcomes in Birmingham, UK. In: Geyer, R. & Cairney, P. (eds.) *Handbook on complexity and public policy*. Cheltenham, Edward Elgar Publishing, pp. 261-283.

Bowen, G. (2006) Grounded Theory and Sensitizing Concepts. *International Journal of Qualitative Methods* 5 (3) 12-23.

Brinkmann, S. (2018) The interview. In Denzin, N. & Lincoln, Y. (eds) *The Sage handbook of qualitative research.* 5th edition. Thousand Oaks, Sage, pp. 576-599.

Brinkmann, S. (2013) *Qualitative interviewing: understanding qualitative research*. New York, Oxford University Press.

Brinkmann, S. & Kvale, S. (2018). *DOIng interviews.* 2nd edition. London, Sage.

Broadhurst, K. (unpublished) *Where is my family? Migrant children in the family courts in Europe*.

Broadhurst, K., & Holt, K. (2010) Partnership and the limits of procedure: prospects for relationships between parents and professionals under the new Public Law Outline. *Child and Family Social Work.* 15, 97–106. DOI:10.1111/j.1365-2206.2009.00648.x

Broadhurst, K., & Williams, T. (2019) Harnessing the power of data to improve family justice: a new Nuffield Family Justice Observatory for England and Wales. *Family Court Review.* 57 (3) 405-415

Broadhurst, K. & Mason, C. (2019) Child removal as the *gateway* to further adversity: birth mother accounts of the immediate and enduring collateral consequences of child removal. *Qualitative Social Work.* 19 (1) 15–37.

Broadhurst, K. & Mason, C. (2014a) Recurrent care proceedings: part 3: birth mothers – against the odds: turning points for women who have lost children to public care. *Family Law.* 44: 1572-1576. ISSN 0014-7281.

Broadhurst, K. & Mason, C. (2014b) Social work beyond the VDU: foregrounding co-presence in situated practice—why face-to-face practice matters. *British Journal of Social Work.* 44, 578–595 DOI:10.1093/bjsw/bcs124. (Accessed 28 April 2020)

Broadhurst, K., Alrouh, B., Mason, C., Ward, H., Holmes, L., Ryan, M. & Bowyer, S. (2018) *Born into care: new-borns in care proceedings in England.* Nuffield. Available from: Born into care: newborns in care proceedings in England -

Nuffield Family Justice Observatory (nuffieldfjo.org.uk) (Accessed 23 August 2022)

Broadhurst, K., Mason, C., Bedston, S., Alrouh, B., Morriss, L., McQuarrie, T., Palmer, M., Shaw, M., Harwin, J. & Kershaw, S. (2017) *Vulnerable birth mothers and recurrent care proceedings.* Nuffield. Available from: rc-final-summary-report-v1_6.pdf (nuffieldfoundation.org) (Accessed 23 August 2022)

Broadhurst, K., Doherty, P., Yeend, E., Holt, K. & Kelly, N. (2013) *Coventry and Warwickshire pre-proceedings pilot: final research report.* Universities of Lancaster and Bradford. Available from: The Coventry and Warwickshire Pre-Proceedings Project: Final Report — Research Explorer The University of Manchester (Accessed 20 May 2020)

Broadhurst, K., Wastell, D., White, S., Hall, C., Peckover, S., Thompson, K., Pithouse A. & Davey D. (2010a) Performing initial assessment*:* Identifying the Latent Conditions for Error at the Front-Door of Local Authority Children's Services*. British Journal of Social Work.* 40, 352–370 DOI:10.1093/bjsw/bcn162.

Broadhurst, K., Hall, C., Wastell, D., White, S. & Pithouse A (2010b) Risk, instrumentalism and the humane project in social work: identifying the informal logics of risk management in children's statutory services *British Journal of Social Work* 40: 1046–1064 DOI:10.1093/bjsw/bcq011.

Brophy, J. (2006) *Research review: child care proceedings under the Children Act 1989*. DCA research series 5/06. Available from: http://www.familieslink.co.uk/download/july07/Childcare%20proceedings%20under%20the%20CA%201989.pdf (Accessed 28 April 2020)

Brophy, J., Sidaway, J., Jhutti-Johal, J. & Owen, C. (2013) *Neither fear nor favour nor ill will: the modernisation of care proceedings and the use and value of independent social work expertise to senior judges*. University of Oxford. Available from:

https://discovery.ucl.ac.uk/id/eprint/10017745/1/Stage_II_Report_FINAL_E_6_Sept_2013.pdf (Accessed 21 May 2020)

Brown, R. & Ward, H. (2013) *Decision-making within a child's timeframe: an overview of current research evidence for family justice professionals concerning*

child development and the impact of maltreatment. Childhood Wellbeing Research Centre. Available from:

http://www.adoptionplus.co.uk/userassets/docs/Decision-making_within_a_child_s_timeframe.pdf (Accessed 20 May 2020)

Bulman, M. (2020) *Coronavirus: social workers brace for a surge in child protection referrals when schools reopen.* The Independent. Available from: Coronavirus: Social workers brace for a surge in child protection referrals when schools re-open | The Independent | The Independent (Accessed 23 June 2020)

Burnett, I., Etherton, T. & McFarlane, A. (2020) *Message for Circuit and District Judges sitting in Civil and Family from the Lord Chief Justice, Master of the Rolls and President of the Family Division.* Available from: Message for Circuit and District Judges sitting in Civil and Family from the Lord Chief Justice, Master of the Rolls and President of the Family Division | Courts and Tribunals Judiciary (Accessed 16 April 2020)

Bryman, A. (2015) *Social Research Methods* (4th edition). Oxford, Oxford University Press.

By, R. (2005) Organisational change management: a critical review. *Journal of Change Management.* 5 (4) 369-380, DOI: 10.1080/14697010500359250.

Byrne, D. & Callaghan, G. (2014) *Complexity theory and the social sciences: the state of the art.* New York, Routledge.

Byrne. D. (2013) Evaluating complex social interventions in a complex world. *Evaluation* 19 (3) 217 –228. DOI: 10.1177/1356389013495617.

Byrne, D. (2005) Complexity, Configurations and Cases. *Theory, Culture & Society* 22 (5) 95–111 DOI: 10.1177/0263276405057194

Byrom, N. (2020) *What we know about the impact of remote hearings on access to justice: a rapid evidence review*. Briefing paper. London. Nuffield. Available from: nfjo_remote_hearings_vulnerable groups_rapid review_20200506.pdf (nuffieldfjo.org.uk) (Accessed 1 June 2020)

Byrom, N. (2019) *Developing the detail: evaluating the impact of court reform in England and Wales on access to justice.* The Legal Education Foundation.

Available from: Microsoft Word - Developing the Detail- Evaluating the Impact of Court Reform in England and Wales on Access to Justice FINAL.docx (thelegaleducationfoundation.org) (Accessed 8 March 2021)

Bywaters, P., Brady, G., Bunting, L., Featherstone, B., Jones, C., Morris, K., Scourfield, J., Sparks, T., & Webb, C. (2017) Inequalities in English child protection practice under austerity: A universal challenge? *Child and Family Social Work* 23(1) 53-61 DOI:10.1111/cfs.12383

Bywaters, P & the Child Welfare Inequalities Project Team (2020) *The Child Welfare Inequalities Project: Final Report* Child Welfare Inequalities Project & Nuffield Foundation Available from: *cwip-overview-final-v4.pdf (coventry.ac.uk) (Accessed 15 February 2023)

Cafcass (2020) *Covid-19 guidance for children and families.* Available from: https://www.cafcass.gov.uk/grown-ups/parents-and-carers/covid-19-guidance-for-children-and-families/ (Accessed 29 June 2020)

Cairney, P. (2016) *The politics of evidence-based policy making.* London, Palgrave Macmillan Limited.

Cairney, P. & Geyer, R. (2017) A critical discussion of complexity theory: how does 'Complexity Thinking' improve our understanding of politics and policymaking? *Complexity, Governance & Networks.* 3 (2) 1-11. DOI: 10.20377/cgn-56

Cairney, P. & Geyer, R. (2015a) Introduction. In: Geyer, R. & Cairney, P. (eds.) *Handbook on complexity and public policy*. Cheltenham, Edward Elgar Publishing, pp. 1-18.

Cairney, P. & Geyer, R. (2015b) Conclusion: where does complexity and policy go from here? In: Geyer, R. & Cairney, P. (eds.) *Handbook on complexity and public policy*. Cheltenham. Edward Elgar Publishing, pp. 457-465.

Cairney, P. & Jones, M. (2016) Kingdon's multiple streams approach: what is the empirical impact of this universal theory? *The Policy Studies Journal*. 44 (1) 37-58. DOI: 10.1111/psj.12111

Care Crisis Review ('CCR') (2018) *Care Crisis Review: options for change.* Family Rights Group. Available from: The Care Crisis Review: Options for Change - Family Rights Group (frg.org.uk) (Accessed 17 December 2019)

Castellani, B. & Gerrits, L. (2021) *Map of the complexity sciences.* Available from: complexity history, social complexity history, complexity theory, complexity sciences, history, complexity map, map of complexity science, history of complexity, complexity theory, complexity science, complexity, brian castellani, lasse gerrits, durham sociology complexity (art-sciencefactory.com) (Accessed 29 July 2022)

Centre for Justice Innovation (2016) *Better courts: the financial impact of the London Family Drug and Alcohol Court.* Available from: https://www.justiceinnovation.org/sites/default/files/media/documents/2019-03/better-courts-the-financial-impact-of-the-london-fdac.pdf (Accessed 17 April 2020)

Chapman, J. (2004) *System failure: why governments must learn to think differently.* Demos. Available from:

http://www.demos.co.uk/files/systemfailure2.pdf (Accessed 2 April 2020)

Charles, A., & Ewbank, L. (2021) *The road to renewal: five priorities for health and care.* The King's Fund. Available from: The road to renewal: five priorities for health and care | The King's Fund (kingsfund.org.uk) (Accessed 19 May 2021)

Charmaz, K (2006) *Constructing grounded theory: a practical guide through qualitative analysis.* London, Sage.

Charmaz, K. & Mitchell, R. (2011) Grounded theory in ethnography. In: Atkinson, P., Coffey, A., Delamont, S., Lofland, J. & Lofland, L. (eds.) *Handbook of Ethnography.* London, Sage, pp. 160-173.

Chettiparamb, A. (2014) Complexity theory and planning: examining 'fractals' for organising policy domains in planning practice. *Planning Theory* 13 (1) 5-25. DOI: 10.1177/1473095212469868

Chia, R. (2011) Complex thinking: towards an oblique strategy for dealing with the complex. In: Allen, P., Maguire, S. & McKelvey, B. (eds.) *The Sage handbook of complexity and management*. London. Sage, pp. 182-198.

Children's Hearings Scotland (2020) *The children's hearings system.* Available from: The children's hearings system (chscotland.gov.uk) (Accessed 14 March 2020)

Cilliers, P. (2016) What can we learn from a theory of complexity? In Preiser, R. (ed.) *Critical complexity: collected essays.* Berlin. De Gruyter, pp. 67-76.

Cilliers, P., & Richardson, K. (2001). What is complexity science? A view from different directions. *Emergence: Complexity and Organization.* 3 (1), 5-23. (Accessed 8 February 2020)

Coggeshall, J. (2004) Closed doors: ethical issues in prison ethnography. In: Hume, L. & Mulcock, J. (eds.) *Anthropologists in the field: cases in participant observation.* New York, Columbia University Press, pp. 140- 152.

Community Care (2013) *Stress-busting Hackney model under threat from cherry picking councils.* Available from:

https://www.communitycare.co.uk/2013/07/16/stress-busting-hackney-model-under-threat-from-cherry-picking-councils/ (Accessed 27 November 2019)

Cooper, A. (2005) Surface and depth in the Victoria Climbié Inquiry Report. *Child and Family Social Work 2005.* 10, pp 1–9. DOI: 10.1111/j.1365-2206.2005.00350.x

Cooper, A (2002) International perspectives on child protection. In Hill, M., Stafford, A. & Green Lister, P. (eds.) *International perspectives on child protection: report of a seminar held on 20 March 2002*. University of Glasgow. Available from:

https://www.researchgate.net/profile/Lennart_Nygren/publication/242600490_International_Perspectives_on_Child_Protection/links/54c8db9a0cf289f0ced1014c/International-Perspectives-on-Child-Protection.pdf#page=130 (Accessed 27 May 2020)

Cooper, A. (1999) With justice in mind: complexity, child welfare and the law. In: King, M. (ed) *Moral Agendas for Children's Welfare*. London, Routledge, pp. 117-135.

Cooper, H. & Geyer, R. (2009) What can complexity do for diabetes management: linking theory to practice. *Journal of Evaluation in Clinical Practice*. 15 (4) 761-765. DOI: 10.1111/j.1365-2753.2009.01229.x

Cross, S., Hubbard, A. & Munro, E. (2010) *Reclaiming social work: independent evaluation.* Available from:

https://secure.toolkitfiles.co.uk/clients/28663/sitedata/files/Eileen-Munro.pdf (Accessed 27 November 2019)

Daicoff, S. (2013) Apology, Forgiveness, Reconciliation & Therapeutic Jurisprudence. *Pepperdine Dispute Resolution Law Journal.* 13 (1) 131-180. ISSN: 1536-3090.

Dale, P., Green, R. & Fellows, R. (2005) *Child protection assessment following serious injuries to infants: fine judgments.* Chichester, John Wiley.

Dale, P., Green, R. & Fellows, R. (2002) *What really happened? Child protection case management of infants with serious injuries and discrepant parental explanations.* London, NSPCC.

Darbyshire, P (2011) *Sitting in judgment: the working lives of judges.* London, Bloomsbury.

Dartington Social Research Unit (1995) *Child protection: messages from research*. London, HMSO

Davies, C. (2002). *Reflexive ethnography: a guide to researching selves and others.* London, Routledge.

Davies, C. & Ward, H. (2012) *Safeguarding children across services: messages from research.* London, Jessica Kingsley.

Davis, L. (2015) *See you in court: a social worker's guide to presenting evidence in proceedings.* 2nd edition. London, Jessica Kingsley.

Department for Education and Skills (2006) Review of the Child Care Proceedings System in England and Wales. Available from: https://webarchive.nationalarchives.gov.uk/+/http:/www.dca.gov.uk/publications/reports_reviews/childcare_ps.pdf (Accessed 7 May 2020)

Department for Education (2014) *Court orders and pre-proceedings: for local authorities.* Available from: DFE stat guidance template (publishing.service.gov.uk) (Accessed 18 May 2022)

Department for Education (2015a) *Characteristics of children in need: 2014 to 2015.* SFR 41/2015. Available from: SFR template National Statistics 240815 (publishing.service.gov.uk) (Accessed 4 August 2022)

Department for Education (2015b) *Special guardianship review: report on findings.* Available from:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/487243/SGR_Final_Combined_Report.pdf. (Accessed 12 November 2019)

Department for Education (2017) *Special guardianship guidance.* Available from: Special guardianship guidance: Statutory guidance (publishing.service.gov.uk) (Accessed 18 May 2022)

Department for Education (2019) *Experimental statistics: children and family social work workforce in England, year ending 30 September 2018*. Available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/782154/Children_s_social_work_workforce_2018_text.pdf (Accessed 22 April 2020)

De Roo, G. (2010) Being or becoming? That is the question! Confronting complexity with contemporary planning theory. In: De Roo, G. & Silva, E. (eds) *A planner's encounter with complexity.* Farnham, Ashgate, pp. 19-40.

Devaney, J. & Spratt, T. (2009) Child abuse as a complex and wicked problem: reflecting on policy developments in the United Kingdom in working with children and families with multiple problems. *Children and Youth Services Review.* 31, 639-641. DOI: 10.1016/j.childyouth.2008.12.003

Dickens, J., Masson, J., Garside, L., Young, J. & Bader, K. (2019) Courts, care proceedings and outcomes uncertainty: the challenges of achieving and assessing "good outcomes" for children after child protection proceedings. *Child & Family Social Work.* 24 (4) 574-581. DOI: 10.1111/cfs.12638

Dickens, J., Beckett, C. & Bailey, S (2014) Justice speed and thoroughness in child protection court proceedings: messages from England. *Children and Youth Services Review* 46, 103-111. DOI: 10.1016/j.childyouth.2014.08.010

Diduck, A. (1999). Justice & childhood: reflections on refashioned boundaries. In: King, M. (ed.) *Moral Agendas for Children's Welfare*. London, Routledge, pp. 92-104.

Doughty, J. (2014) Care proceedings - is there a better way? *Child and Family Law Quarterly* 26 (2) 113-131.

Eekelaar, J. & Maclean, M (2013) *Family Justice: The Work of Family Judges in Uncertain Times.* Oxford, Hart Publishing.

Emerson, R., Fretz, R. & Shaw, L. (2011) Participant observation and fieldnotes. In: Atkinson, P., Coffey, A., Delamont, S., Lofland, J. & Lofland, L. (eds) *Handbook of Ethnography.* London, Sage, pp. 352-366.

Evans, T. & Harris, J. (2004) Street-level bureaucracy, social work and the (exaggerated) death of discretion. *British Journal of Social Work.* 13, 871-895. DOI.10.1093/bjsw/bch106

Evans, T. (2011) Professionals, managers and discretion: critiquing street-level bureaucracy. *British Journal of Social Work* 41, 368–386 DOI:10.1093/bjsw/bcq074

Exall, G. (2019) *Court reform: view from the district judges: 'we question whether there has been meaningful (as opposed to token) consultation with all levels of the judiciary.'* Civil Litigation Brief. Available from: COURT REFORM: VIEW FROM THE DISTRICT JUDGES: "WE QUESTION WHETHER THERE HAS BEEN MEANINGFUL (AS OPPOSED TO TOKEN) CONSULTATION WITH ALL LEVELS OF THE JUDICIARY" – Civil Litigation Brief (Accessed 30 June 2022)

Family Justice Review ('FJR') (2011a) *Interim report*. HM Government. Available from: https://www.gov.uk/government/publications/family-justice-review-interim-report (Accessed 18 November 2020)

Family Justice Review ('FJR') (2011b) Final report. HM Government. Available from: https://www.gov.uk/government/publications/family-justice-review-final-report (Accessed 18 November 2020)

Featherstone, B., White, S. & Morris, K. (2014). *Re-imagining child protection*. Bristol, Policy Press.

Featherstone, B., Broadhurst, K. & Holt, K. (2012) Thinking systemically — thinking politically: building strong partnerships with children and families in the context of rising inequality. *British Journal of Social Work* 42, 618–633 DOI:10.1093/bjsw/bcr080

Ferguson, H. (2016a) Researching social work practice close up: using ethnographic and mobile methods to understand encounters between social workers, children and families. *British Journal of Social Work*, 46, 153–168. DOI:10.1093/bjsw/bcu120.

Ferguson, H. (2016b) What social workers do in performing child protection work: evidence from research into face-to-face practice. *Child and Family Social Work,* 21, 283–294. DOI:10.1111/cfs.12142

Ferguson, H. (2016c) Professional helping as negotiation in motion: social work as work on the move. *Applied Mobilities*, 1:2, 193-206. DOI: 10.1080/23800127.2016.1247523

Ferguson, H. (2017) How children become invisible in child protection work: findings from research into day-to-day social work practice. *British Journal of Social Work,* 47, 1007–1023. DOI: 10.1093/bjsw/bcw065.

Ferguson, H. (2018) How social workers reflect in action and when and why they don't: the possibilities and limits to reflective practice in social work. *Social Work Education*, 37:4, 415-427. DOI: 10.1080/02615479.2017.1413083

Fish, S. & Hardy. M (2015) Complex issues, complex solutions: applying complexity theory in social work practice. *Nordic Social Work Research*. 5:sup1, 98-114, DOI: 10.1080/2156857X.2015.1065902

Forrester, D (2017) Outcomes in children's social care. *Journal of Children's Services.* 12 (2/3) 144-157. DOI 10.1108/JCS-08-2017-0036

Forrester, D., Westlake, D., McCann, M., Thurnham, A., Shefer, G., Glynn, G. & Killian, M. (2013) *Reclaiming social work? An evaluation of systemic units as an approach to delivering children's services.* Tilda Goldberg Centre for Social Work and Social Care. Available from:

https://uobrep.openrepository.com/handle/10547/594517 (Accessed 18 May 2020)

Flyvbjerg, B. (2006) Five misunderstandings about case-study research. *Qualitative Inquiry* 12 (2) 219-245. DOI: 10.1177/1077800405284363

Freeman, P., & Hunt, J. (1998) *Parental perspectives on care proceedings.* London, The Stationery Office.

Frontline., Centre for Public Impact (CPI) UK., & Buurtzorg Britain & Ireland. (2019) *A blueprint for children's social care: unlocking the potential of social work.* Available from: https://thefrontline.org.uk/wp-content/uploads/2019/11/New-blueprint-for-childrens-social-care.pdf (Accessed 10 January 2020)

Gale, N., Heath, G., Cameron, E., Rashid, S. & Redwood, S. (2013) Using the framework method for the analysis of qualitative data in multi-disciplinary health research. *BMC Medical Research Methodology* 2013, 13 (Article no. 117) 1-8 Available from: http://www.biomedcentral.com/1471-2288/13/117 (Accessed 26 March 2021)

Geertz, C. (1973) *The interpretation of cultures.* New York, Basic Books.

Gerin, M., Hanson, E. Viding, E. & McCrory, E. (2019) A review of childhood maltreatment, latent vulnerability and the brain: implications for clinical practice and prevention. *Adoption and Fostering.* 43 (3), 310-328. DOI:10.1177/0308575919865356

Geyer, R. (2012). Can Complexity Move UK Policy beyond 'Evidence-Based Policy Making' and the 'Audit Culture'? Applying a 'Complexity Cascade' to Education and Health Policy. *Political Studies,* 60 (1), 20-43. DOI: 10.1111j.1467-9248.2011.00903x

Geyer, R. & Rihani, S. (2010) *Complexity and Public Policy.* London, Routledge.

Gilbert, N., Parton, N. & Skivenes, M. (2011) *Child protection systems: international trends and emerging orientations*. Oxford, Oxford University Press.

Goffman, E. (1989). On fieldwork. *Journal of Contemporary Ethnography*. (18) 123-132. DOI:10.1177/089124189018002001

Goffman, E. (1963) *Behaviour in Public Places*. New York, Free Press.

Gold, R. (1958) Roles in Sociological Field Observation. *Social Forces* 36 (3) 217–223.

Gonzalez, M. (2000) The four seasons of ethnography: a creation-centred ontology for ethnography. *International Journal of Intercultural Relations* (24) 623-650. DOI: 10.1016/S0147-1767(00)00020-1

Goodman, S. & Trowler, I. (eds.) (2012) *Social work reclaimed: innovative frameworks for child and family social work practice.* London, Jessica Kingsley.

Gordon, L., Rees, C., Ker, J. & Cleland, J. (2017) Using video-reflexive ethnography to capture the complexity of leadership enactment in the healthcare workplace. *Advances in Health Sciences Education: Theory and Practice, 22*(5), 1101-1121. DOI 10.1007/s10459-016-9744-z

Gove, M. (2012) *The failure of child protection and the need for a fresh start.* Speech at the Institute of Public Policy Research 19/11/12. Available from: The failure of child protection and the need for a fresh start - GOV.UK (www.gov.uk) (Accessed 22 April 2022)

Government UK (2022) *Family Justice Board.* Available from: Family Justice Board - GOV.UK (www.gov.uk) (Accessed 16 March 2022)

Government UK (2021) *Family Justice Board Meeting: 19 May 2021.* Available from: fjb-may-2021-mins.pdf (publishing.service.gov.uk) (Accessed 16 March 2022)

Gray, B. (2015) A case study of complexity and health policy: planning for a pandemic. In: Geyer, R. & Cairney, P. (eds.) *Handbook on complexity and public policy*. Cheltenham, Edward Elgar Publishing, pp. 384-398.

Green, R. (2021) The modernisation of family justice before and beyond the pandemic: how can complexity theory help us understand the progress and limitations of the reforms? *Journal of Social Welfare and Family Law* 43 (4) 439-454. DOI: 10.1080/09649069.2021.1996080

Harker, L. & Ryan, M. (2022) Remote hearings in family courts in England and Wales during Covid-19: Insights and lessons. *Family Court Review (Special Issue)* 1-13 DOI: 10.1111/fcre.12638

Harris, N. (2013) *Law in a complex state: complexity in the law and structure of welfare*. Oxford, Hart Publishing.

Harrison, J. (2020) *Coronacontact – what about the children in care?* Transparency Project. Available from: Coronacontact- what about the children in care? | The Transparency Project (Accessed 26 June 2020)

Harrison, N. (2003) *Good governance: complexity, institutions and resilience*. Prepared for Presentation at the Open Meeting of the Global Environmental Change Research Community, Montreal, Canada, 16-18 October, 2003. Available from: Scholars in disciplines from ecology to economics and biology to sociology generally agree that a necessary condition of susta (researchgate.net) (Accessed 4 March 2021)

Harwin, J., Alrouh B., Golding, L., McQuarrie, T., Broadhurst, K. & Cusworth, L. (2019). Nuffield. *The contribution of supervision orders and special guardianship to children's lives and family justice.* Available from: https://www.nuffieldfjo.org.uk/resource/the-contribution-of-supervision-orders-and-special-guardianship-to-children-s-lives-and-family-justice (Accessed 5 November 2019)

Harwin J., Alrouh B., Ryan M. & Tunnard J. (2014) *Changing lifestyles, keeping children safe: an evaluation of the first Family Drug and Alcohol Court (FDAC) in care proceedings*. Brunel University. Available from: Changing-Lifestyles-

Keeping-Children-Safe-an-evaluation-of-the-first-Family-Drug-and-Alcohol-Court-FDAC-in-care-proceedings-May-2014.pdf (Accessed 28 October 2019)

Harwin, J., Alrouh, B., Ryan, M., McQuarrie, T., Golding, L., Broadhurst, K., Tunnard, J. & Swift, S. (2016) *After FDAC: outcomes 5 years later.* Lancaster University. Available from:

http://wp.lancs.ac.uk/cfj-fdac/files/2016/12/FDAC_FINAL_REPORT_2016.pdf (Accessed 28 October 2019)

Harwin, J. & Golding, L. (2022) *Supporting families after care proceedings: supervision orders and beyond.* Department for Education. Available from: Supporting families after care proceedings: supervision orders and beyond (publishing.service.gov.uk) (Accessed 23 June 2022)

Haynes, P. (2007) Chaos, complexity and transformations in social care policy in England. *Public Money and Management* 27 (3) 199-206. DOI: 10.1111/j.1467-9302.2007.00580.x

Hedley, M (2014) Family life and child protection. *Family Law Quarterly* 26 (1) 7-13.

Hetherington, R. (1997) *Protecting children: messages from Europe*. Lyme Regis, Russell House.

Herweg, N., Zahariadis, N. & Zohlnhöfer. (2017) The multiple streams framework: foundations, refinements and empirical applications . In: Weible, C. & Sabatier, P. (eds) *Theories of the Policy Process.* 4th edition. New York, Routledge, pp. 17-54.

HMCTS (2021) *Weekly use of remote technologies in HMCTS.* Available from: Weekly use of remote hearing technologies in HMCTS - GOV.UK (www.gov.uk) (Accessed 26 June 2020)

HMCTS (2019) *Reform Update: Summer 2019.* Available from: HMCTS_Reform_Update_Summer_19.pdf (publishing.service.gov.uk) (Accessed March 8 2021)

HM Government (2018) *Working Together to safeguard children.* Available from: Working Together to Safeguard Children 2018 (publishing.service.gov.uk) (Accessed 6 July 2022)

Hobbs, C. (2019) *Systemic leadership for local governance: tapping the resource within.* Cham Switzerland, Palgrave Macmillan.

Holt. K. & Kelly, N. (2018) Limits to partnership working: developing relationship-based approaches with children and their families. *Journal of Social Welfare and Family Law*. 40 (2) 147–163 DOI: 10.1080/09649069.2018.1444447.

Horgan, J. (1995) From complexity to perplexity. Scientific American. 272 (6) 104-109. https://www.jstor.org/stable/24980838?seq=1 (Accessed 21 April 2020)

House of Commons (2018) *Public Accounts Committee report on HMCTS court reform programme.* HC 976. Available from: 976.pdf (parliament.uk) (Accessed 2 June 2020)

Human, O. & Cilliers, P. (2013) Towards an economy of complexity: Derrida, Morin and Bataille. *Theory, Culture & Society* 30 (5) 24–44. DOI: 10.1177/0263276413484070.

Hume, L. & Mulcock, J. (2004) Introduction: awkward spaces, productive places. In Hume, L. & Mulcock, J. (eds) *Anthropologists in the field: cases in participant observation.* New York, Columbia University Press. pp. xi – xxvii.

Hunt, J. (2010) *Parental perspectives on the family justice system in England and Wales: a review of research.* Family Justice Council. Available from: https://www.judiciary.uk/wp-content/uploads/JCO/Documents/FJC/Publications/Parental_Perspectives_final.pdf (Accessed 29 April 2020)

Hunt, J. (1998) A moving target – care proceedings as a dynamic process. *Child and Family Law Quarterly* 10 (3) 281-290

Hunt, J., Macleod, A. & Thomas, C. (1999) *The last resort: Child protection, the courts and the 1989 Children Act*. London, Stationery Office.

Hunter, R., Roach Anleu, S. & Mack, Kathy. (2016) Judging in Lower Courts: Conventional, procedural, therapeutic and feminist approaches. *International Journal of Law in Context* 12 (3) 337-360. ISSN 1744-5523.

Innes, J. & Booher, D. (2010) *Planning with complexity.* Abingdon, Routledge.

Ipsos Mori (2014) *Action research to explore the implementation and early impacts of the revised Public Law Outline (PLO).* Ministry of Justice Analytical Series. Available from:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/304477/action-research-to-explore-plo-implementation-and-early-impacts.pdf (Accessed 20 May 2020)

Johnson, L. (2015) Complexity modelling and application to policy research. In: Geyer, R. & Cairney, P. (eds.) *Handbook on complexity and public policy*. Cheltenham, Edward Elgar Publishing, pp. 150-170.

Judicial College (2018) *Family Court Bench Book*. Available from: Family Court Bench Book - January 2018 (judiciary.uk) (Accessed 1 December 2021)

Kaganas, F. (2014) Child protection and the modernised family justice system. In Wallbank, J. & Herring, J. (eds.) *Vulnerabilities, Care and Family Law*. Oxford, Routledge, pp. 138 – 166

Kelly, E., Lee, T., Sibieta, L. & Waters, T. (2018) *Public spending on children in England: 2000 to 2020.* Children's Commissioner/ Institute for Fiscal Studies. Available from: Public spending on children in England: 2000 to 2020 - Institute For Fiscal Studies - IFS (Accessed 10 March 2021)

King, M. & Trowell, J. (1992) *Children's welfare and the law: the limits of legal intervention*. London, Sage.

Kriz, K. & Skivenes, M. (2015) Challenges for marginalized minority parents in different welfare systems: child welfare workers' perspectives. *International Social Work* 58, 75-87. DOI: 10.1177/0020872812456052

Kvilvang, N., Bjurström, B. & Almqvist, R. (2019): Making sense of complexity in governance: the case of local public management in the City of Stockholm. *Policy Studies*. DOI: 10.1080/01442872.2019.1577372

Labuschagne, N., Hadridge, G., Vanderbijl, L., Jones, S. & Geater, E. (2021) Protecting children during the pandemic. In: Turner, D. (ed) *Social Work and Covid-19: lessons for education and practice*. St Albans, Critical Publishing, pp. 15-22.

Laming (2003) *The Victoria Climbie Inquiry: report of an inquiry by Lord Laming*. Available from: https://www.gov.uk/government/publications/the-victoria-climbie-inquiry-report-of-an-inquiry-by-lord-laming (Accessed October 21 2019)

Lane, M. (2007) Child protection proceedings in court. In: Wilson, K. & A. James, A. (eds) *Child Protection Handbook* London, Elsevier pp. 331–343.

Lassiter, L. & Campbell, E. (2010) What will we have ethnography do? *Qualitative Inquiry* 16 (9) 757–767 DOI: 10.1177/1077800410374444

Li, J. (2008) Ethical challenges in participant observation: a reflection on ethnographic fieldwork. *The Qualitative Report,* 13 (1) 100-115. Available from: Ethical challenges in participant observation: a reflection on ethnographic fieldwork - Document - Gale Academic OneFile (Accessed 17 March 2020)

Lichterman, P. (2017) Interpretive reflexivity in ethnography. *Ethnography* 18 (1) 35–45. DOI: 10.1177/1466138115592418

Lichterman, P. & Reid, I. (2015) Theory and Contrastive Explanation in Ethnography. *Sociological Methods & Research*, 44(4) 585-635. DOI: 10.1177/0049124114554458

Lindblom, C. (1959) The science of muddling through. *Public Administration Review.* 19, 79-88.

Lindley, B. (1999) State intervention and parental autonomy in children's cases: have we got the balance right? In: Bainham, A., Day-Sclater, S. & Richards, M. (eds.) *What is a parent? A socio-legal analysis*. Oxford, Hart Publishing, pp. 197-215.

Lipsky, M. (1980) *Street level bureaucracy: dilemmas of the individual in public services.* New York. Russell Sage.

Little, A. (2015) Complexity and real politics. In: Geyer, R. & Cairney, P. (eds.) *Handbook on complexity and public policy*. Cheltenham, Edward Elgar Publishing, pp. 32-47.

Lloyd, M (2020) *Coronavirus: Barnardo's declares fostering 'crisis' in lockdown.* BBC News. Available from: Coronavirus: Barnardo's declares fostering 'crisis' in lockdown - BBC News (Accessed 29 June 2020)

Locke, E. & Latham G. (2002) Building a practically useful theory of goal setting and task motivation: a 35-year odyssey. *American Psychologist* 57 (9) 705–717 DOI: 10.1037//0003-066X.57.9.705

Lushey, C., Holmes, L. & McDermid, S. (2018). Normalizing post adoption support for all. *Child & Family Social Work* 23 (2) 137-145.DOI: 10.1111/cfs.12391

Lutman, E. & Farmer, E. (2013) What contributes to outcomes for neglected children who are reunified with their parents? Findings from a five-year follow-up study. *British Journal of Social Work*. 43, 559-578 DOI:10.1093/bjsw/bcrl84

MacAlister, J. (2022) *The independent review of children's social care: final report*. Available from: Final Report - The Independent Review of Children's Social Care (independent-review.uk) (Accessed 31 May 2022)

MacAlister, J. (2021) *The case for change.* The independent review of children's social care. Available from: case-for-change.pdf (independent-review.uk) (Accessed 1 December 2021)

MacLean, D. & MacIntosh, R. (2011) Organizing at the edge of chaos: insights from action research. In Allen, P., Maguire, S. & McKelvey, B. (eds.) *The Sage handbook of complexity and management*. London, Sage, pp 235-253

Maclean, M., Eekelaar, J. & Bastard, B. (2015) Introduction. In: Maclean, M., Eekelaar, J. and Bastard, B. (eds.) *Delivering family justice in the 21st century* (Oñati international series in law and society). Oxford, Hart Publishing, pp. 1-12.

MacDonald J (2020) *The remote access family court.* Available from: The-Remote-Access-Family-Court-Version-4-Final-16.04.20.pdf (judiciary.uk) (Accessed 19 April 2020)

Marion, R. & Uhl-Bien, M. (2011) Implications of Complexity Science for the Study of Leadership. In Allen, P., Maguire, S. & McKelvey, B. (eds.) *The Sage handbook of complexity and management*. London, Sage, pp. 385-399.

Marion, R. & Uhl-Bien, M. (2001) Leadership in complex organisations. *The Leadership Quarterly* (12) 389 – 418 PII: S 1 048-9843(01)00092-3

Mason, C. & Wilkinson, J. (2021). *Services for parents who have experienced recurrent care proceedings: Where are we now?* Dartington Trust. Available from: https://www.researchinpractice.org.uk/media/5474/services-for-parents-who-have-experienced-recurrent-care-proceedings.pdf (Accessed 24 May 2022)

Masson, J. (2020) Reflections on social welfare and family law. *Journal of Social Welfare and Family Law*, 42(4), 409-415. DOI: 10.1080/09649069.2020.1837518

Masson, J. (2017). Disruptive Judgments. *Child and Family Law Quarterly*. 29 (4) 401-422. ISSN: 1358-8184

Masson, J. (2015) Third (or fourth) time lucky for care proceedings reform? *Family Law Quarterly*. 27 (1) 3-24

Masson, J. (2012) 'I think I do have strategies': lawyers' approaches to parent engagement in care proceedings. *Child and Family Social Work* 17 202–211

Masson, J., Dickens, J., Garside, L., Bader, K., & Young, J. (2020a) *Reforming care proceedings 4: Outcomes of pre-proceedings and care proceedings*. Universities of Bristol and East Anglia. Available from: https://www.uea.ac.uk/documents/3437903/0/Summary+Report+4+FINAL.pdf/98356809-c0fd-20b6-7016-718cb3630405 (Accessed 13 May 2020)

Masson, J., Garside, L., & Jenney, S. (2020b) Linking children's social care data to information about their care proceedings to understand the use of care proceedings and their effects on parents, children and local authorities. *Children & Family Social Work* (25) 628-636

Masson, J., Dickens, J., Garside, L., Bader, K., & Young, J. (2019). *Child protection in court: outcomes for children: establishing outcomes of care proceedings for children before and after care proceedings reform.* Universities of Bristol and East Anglia. Available from: FINAL_REPORT.pdf (bris.ac.uk) (Accessed 14 May 2020)

Masson, J., Garside, L., Bader, K., Dickens, J., & Young, J. (2018) *Reforming care proceedings 2: Children's outcomes*. Universities of Bristol and East Anglia. Available from:

http://www.uea.ac.uk/documents/541194/26879345/Summary+findings+2+FINAL.pdf/bfe04f6b-bcad-38c1-efaa-056e9ff3bf69 (Accessed 14 May 2020)

Masson, J., Dickens, J., Bader, K., Garside, L., & Young, J. (2017). Achieving positive change for children? Reducing the length of child protection proceedings: lessons from England and Wales. *Adoption and Fostering*. 41 (4) 401-413. DOI: 10.1177/0308575917730007

Masson, J., Dickens. J., Bader, K. & Young, J. (2013) *Partnership by Law? The pre-proceedings process for families on the edge of care proceedings.* Universities of Bristol and East Anglia. Available from: file:///C:/Users/44794/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/TempState/Downloads/SSRN-id2281146%20(1).pdf (Accessed 14 May 2020)

Masson, J., Pearce, J., Bader, K., Joyner, O., Marsden, J. & Westlake, D. (2008) *Care profiling study.* Ministry of Justice. Available from: http://www.bristol.ac.uk/media-library/sites/law/migrated/documents/care-profiling-study-report.pdf (Accessed 17 October 2019)

McBride, K. (2017) Mr. Mothercountry: the rule of law as practice. *Law, Culture and the Humanities*. 13 (3) 320 –334.

McCracken, K., Priest, S., Fitzsimons, A., Bracewell, K., Torchia, K. & Parry, W. (2017) *Evaluation of Pause.* DfE Children's Social Care Innovation Programme Evaluation Report 49. Available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/625374/Evaluation_of_Pause.pdf (Accessed 28 May 2020)

McCurdy, P. & Uldam, J. (2014) Connecting participant observation positions: toward a reflexive framework for studying social movements. *Field Methods*, 26(1) 40-55. DOI: 10.1177/1525822X13500448.

McFarlane, A. (2021) *The Road Ahead 2021.* Available from: Road-Ahead-2021.pdf (judiciary.uk) (Accessed 10 January 2021)

McFarlane, A. (2020a) *Covid-19: national guidance for the family courts.* Available from: COVID 19: National Guidance for the Family Court (judiciary.uk) (Accessed 27 March 2020)

McFarlane, A. (2020b) *The Road Ahead.* Available from: The-Road-Ahead_FINAL.pdf (judiciary.uk) (Accessed 11 June 2020)

McFarlane, A. (2019) *Family Judicial Ways of Working (JWoW) Communication.* Available from: family-jwow-response-1.pdf (judiciary.uk) (Accessed 4 May 2020)

Michael Sieff Foundation (2019) *Plan agreed to revive central support for pioneering Family Drug & Alcohol Court.* Available from: Family Drug and Alcohol Court (FDAC) National Unit Action Plan 2019 (michaelsieff-foundation.org.uk) (Accessed 14 March 2020)

Miles, M. & Huberman, M. (1994) *Qualitative data analysis.* Thousand Oaks, Sage.

Ministry of Housing, Communities & Local Government (2019) *The English indices of deprivation 2019.* IoD2019. Available from: The English Indices of Deprivation 2019 (publishing.service.gov.uk) (Accessed 13 July 2021)

Ministry of Justice (2021) *Practice Direction 12A – care, supervision and other part 4 proceedings: guide to case management.* Available from: PRACTICE DIRECTION 12A - CARE, SUPERVISION AND OTHER PART 4 PROCEEDINGS: GUIDE TO CASE MANAGEMENT (justice.gov.uk) (Accessed 17 June 2021)

Ministry of Justice (2020) *Family Procedure Rules. Part 1: Overriding Objective.* Available from: PART 1 - OVERRIDING OBJECTIVE (justice.gov.uk) (Accessed 2 August 2022)

Ministry of Justice (2012) *The government response to the Family Justice Review: a system with children and families at its heart.* Available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/177097/CM-8273.pdf (Accessed 12 May 2020)

Mitchell, J. (2007) Ethnography. In: Outhwaite, W. & Turner, S. (eds.) *The Sage handbook of social science methodology.* London, Sage, pp.55-56

Morçöl , G. (2015). Can we discover the Higgs Boson of public administration theory? A complexity theory answer. In: Geyer, R. & Cairney, P. (eds.), *Handbook on complexity and public policy*. Cheltenham, Edward Elgar Publishing, pp. 78-91

Mornington, A., & Guyard-Nedelec, A. (2019) Is poverty eroding parental rights in Britain? The case of child protection in the early twenty-first century. In: Brando, N. & Schweiger, G. (eds.) *Philosophy and child poverty: reflections on the ethics and politics of poor children and their families.* Switzerland, Springer pp. 341-360.

Muir, S. (2004) Not quite at home: field envy and new age ethnographic disease. In: Hume, L. & Mulcock, J. (eds) *Anthropologists in the field: cases in participant observation.* New York, Columbia University Press, pp. 185-200.

Munby, J. (2016) *View from the President's chambers*: *care cases – the looming crisis.* Available from: https://www.judiciary.uk/wp-content/uploads/2014/08/pfd-view-15-care-cases-looming-crisis.pdf (Accessed 14 November 2019)

Munby, J. (2014) *21st Century Family Law: the Michael Farmer memorial lecture.* Available from: https://www.judiciary.uk/wp-content/uploads/2014/10/munby-speech-bangor-10102014.pdf (Accessed 15 May 2020)

Munro, E. (2011) *The Munro Review of child protection final report: a child-centred system.* London. Department for Education. Available from: Munro-Review.pdf (publishing.service.gov.uk) (Accessed 16 October 2019)

Munro, E. (2010) *The Munro Review of child protection part one: a systems analysis.* London. Department for Education. Available from: TheMunroReview-Part_one.pdf (publishing.service.gov.uk) (Accessed 16 October 2019)

Munro, E. (2004) The impact of audit on social work practice. *British Journal of Social Work* 34 1075–1095 DOI:10.1093/bjsw/bch130

Munro, E. & Calder, M. (2005) Where has child protection gone? *Political Quarterly,* 76 (3) 439-445

Murphy, E. & Dingwall, R. (2011) The Ethics of Ethnography In: Atkinson, P., Coffey, A., Delamont, S., Lofland, J. & Lofland, L. (eds) *Handbook of Ethnography.* London. Sage. pp 339 – 351.

Murray, J., Webb, T. & Wheatley, S. (2018) Encountering law's complexity. In: Murray, J., Webb, T., & Wheatley, S. (eds.) *Complexity theory and law: Mapping an emergent jurisprudence.* Milton, Routledge, pp. 3-22.

National Audit Office (2018a) *Reducing emergency admissions.* Department of Health and Social Care. Report number: HC 833. Available from: Reducing emergency admissions - National Audit Office (NAO) report (Accessed December 6 2019)

National Audit Office (2018b) *Early progress in transforming courts and tribunals.* HMCTS. HC-101. Available from: Early progress in transforming courts and tribunals - National Audit Office (NAO) Report (Accessed 1 June 2020)

National Audit Office (2016) *Children in Need of Help or Protection.* Department for Education. Available from: Children in need of help or protection (nao.org.uk) (Accessed 16 February 2022)

Nonet, P. & Selznick, P. (2001) *Law and society in transition: towards responsive law* (2nd edition) New Brunswick, Transaction Publishers.

Oatley, T. (2019) Toward a political economy of complex interdependence. *European Journal of International Relations* (25) (4) 957–978. DOI: 10.1177/1354066119846553

Ofsted (2019a) *Focused visit to London Borough of Hackney local authority children's services.* Available from: *https://files.ofsted.gov.uk/v1/file/50059653* (Accessed 6 February 2020)

Ofsted (2019b) *Inspection of children's social care services: London Borough of Hackney.* Available from: https://files.ofsted.gov.uk/v1/file/50135828 (Accessed 6 February 2020)

Ofsted (2020) *The Annual Report of Her Majesty's Chief Inspector of Education, Children's Services and Skills 2018/19.* Available from: *https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/859422/Annual_Report_of_Her_Majesty_s_Chief_Inspector_of_Education__Children_s_Services_and_Skills_201819.pdf* (Accessed 22 May 2020)

O'Reilly, K. (2012). *Ethnographic Methods* (2nd edition). Abingdon, Routledge.

Osborne, I. (undated) *Legal aid for family law matters.* Available from: Legal Aid for Family Law Matters - Boardman, Hawkins & Osborne LLP (bholegal.co.uk) (Accessed 18 August 2022)

Papen, U. (2019) Participant observation and field notes. In: Tusting, K. (ed.) *The Routledge handbook of linguistic ethnography.* London. Routledge. pp. 141-153.

Parton, N. (2014) Social work, child protection and politics: some critical and constructive reflections. *British Journal of Social Work* 44, 2042–2056 DOI:10.1093/bjsw/bcu091

Parton, N. (2011) *The increasing length and complexity of central government guidance about child abuse in England: 1974-2010.* University of Huddersfield (unpublished) Available from: http://eprints.hud.ac.uk/9906/ (Accessed 20 April 2020)

Parton, N. (1998) Risk, advanced liberalism and child welfare: the need to rediscover uncertainty and ambiguity. *The British Journal of Social Work* 28 (1) 5-27

Pattinson, R., Broadhurst, K., Alrouh, B., Cusworth, L., Doebler, S., Griffiths, L., Johnson, R., Akbari, A. & Ford, D. (2021). *Born into care: Newborn babies in urgent care proceedings in England and Wales.* Summary. London: Nuffield Family Justice Observatory. Available from: Newborn babies in urgent care proceedings in England and Wales - Nuffield Family Justice Observatory (nuffieldfjo.org.uk) (Accessed 6 December 2021)

Pearce, J., & Masson, J. with Bader, K. (2011) *Just following instructions? The representation of parents in care proceedings.* ESRC RES-062-23-1163. Available from:

http://www.bristol.ac.uk/media-library/sites/law/migrated/documents/justfollowinginstructions.pdf (Accessed January 21 2020)

Pegram, T. & Kreienkamp, J. (2019) *Governing Complexity: design principles for improving the governance of global catastrophic risks.* Global Governance Institute. Available from: https://www.ucl.ac.uk/global-governance/sites/global-governance/files/governing_complex_global_catastrophic_risks_ggi_policy_brief_nov2019.pdf (Accessed 19 November 2020)

Philip, G., Bedston, S., Youansamouth, L., Clifton, J., Broadhurst, K., Brandon, M., & Hu, Y. (2021) *'Up against it': understanding fathers' repeat appearance in local authority care proceedings*. Nuffield. Available from: (PDF) 'Up Against It': Understanding Fathers' Repeat Appearance in Local Authority Care Proceedings (Full Project Report) (researchgate.net) (Accessed 27 April 2022)

Philip, G., Clifton, J. & Brandon, M. (2018) The trouble with fathers: the impact of time and gendered thinking on working relationships between fathers and social workers in child protection practice in England. *Journal of Family Issues* 40 (16) 2288–2309. DOI: 10.1177/0192513X18792682

Plowman, D., Baker, L., Beck, T., Kulkarni, M., Solansky, S. & Travis, D. (2007a) Radical change accidentally: the emergence and amplification of small change. *The Academy of Management Journal* 50 (3) 515-543

Plowman, D., Solansky, S., Beck, T., Baker, L. & Kulkarni, M. (2007b) *The role of leadership in emergent self-organisation.* University of Nebraska. Lincoln. Available from: The role of leadership in emergent, self-organization (unl.edu) (Accessed 15 December 2020)

Plsek, P. (2001) *Why won't the NHS do as it's told?* Plenary address, NHS Conference (unpublished)

Preston-Shoot, M. (2001) Regulating the road of good intentions: observations on the relationship between policy, regulations and practice in social work. *Practice.* 13 (4) 5-20. DOI: 10.1080/09503150108411523

Price, J. & Haynes, P. with Darking, M., Stroud, J., Warren-Adamson, C. & Ricaurte, C. (2015) The policymaker's complexity toolkit. In: Geyer, R. & Cairney, P. (eds.) *Handbook on complexity and public policy*. Cheltenham, Edward Elgar Publishing, pp. 92-110.

Public Accounts Committee (2010) *Cafcass' response to increased demand for its services.* Available from: https://publications.parliament.uk/pa/cm201011/cmselect/cmpubacc/439/43902.htm (Accessed 2 June 2020)

Public Law Working Group ('PLWG') (2021) *Recommendations to achieve best practice in the child protection and family justice systems*: *final report*. Available from: Microsoft Word - March 2021, report (final).docx (judiciary.uk) (Accessed 7 June 2022)

Public Law Working Group ('PLWG') (2020) *Recommendations to achieve best practice in the child protection and family justice systems: special guardianship orders.* Available from: Microsoft Word - 10 June 2020, final SGO report.docx (judiciary.uk) (Accessed 7 June 2022)

Public Law Working Group ('PLWG') (2019) *Recommendations to achieve best practice in the child protection and family justice systems: interim report.* Available from: https://www.judiciary.uk/wp-content/uploads/2019/07/Public-Law-Working-Group-Child-Protection-and-Family-Justice-2019-1.pdf (Accessed 20 November 2019)

Ragin, C. (2009) Reflections on casing and case-oriented research. In: Byrne, D. & Ragin, C. (eds.) *The Sage Handbook of Case-Based Methods*. London, Sage, pp. 522-534

Regine, B. & Lewin, R. (2000) Leading at the edge: how leaders influence complex systems. *Emergence* 2 (2) 5-23. Leading at the Edge: How Leaders Influence Complex Systems: Emergence: Vol 2, No 2 (tandfonline.com) (Accessed 25 August 2022)

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

Ritchie, J. & Spencer, L. (1994) Qualitative data analysis for applied policy research. In: Bryman, A. & Burgess, R. (eds.) *Analysing Qualitative Data.* Abingdon, Taylor & Francis. pp. 173-194.

Rittel, H. & Webber, M. (1973) Dilemmas in a general theory of planning. *Policy Sciences* 4, 155-169.

Robertson, L., & Broadhurst, K. (2019). Introducing Social Science Evidence in Family Court Decision-Making and Adjudication: Evidence from England and Wales. *International Journal of Law, Policy and the Family.* 33 (2) 181-203.

Room, G. (2015) Complexity, power and policy. In: Geyer, R. & Cairney, P. (eds.) *Handbook on complexity and public policy*. Cheltenham, Edward Elgar Publishing, pp. 19-31.

Ruhl, J., & Katz D. (2018) Mapping law's complexity with legal maps. In Murray, J., Webb, T., & Wheatley, S. (eds.) *Complexity theory and law: Mapping an emergent jurisprudence.* Milton, Routledge, pp. 3-22

Ruhl, J. (2008). Law's complexity: a primer. *Georgia State University Law Review*. 24, 885-911. ISSN:8755-6847

Ryan, M., Harker, L. & Rothera, S. (2020a) *Remote hearings in the family justice system: a rapid consultation.* Nuffield Family Justice Observatory. Available from: nfjo_remote_hearings_20200507-2-.pdf (nuffieldfjo.org.uk) (Accessed 7 May 2020)

Ryan, M., Harker, L. & Rothera, S. (2020b) *Remote hearings in the family justice system: reflections and experiences.* Nuffield Family Justice Observatory. Available from: remote_hearings_sept_2020.pdf (nuffieldfjo.org.uk) (Accessed 28 October 2020)

Saltiel, D. (2016) Observing front-line decision-making in child protection. *British Journal of Social Work* 46, 2104–2119 DOI:10.1093/bjsw/bcv112

Sacker, A., Murray, E. Lacey, R. & Maughan, B. (2021) *The lifelong health and wellbeing trajectories of people who have been in care.* Nuffield. Available from:

The-lifelong-health-and-wellbeing-trajectories-of-people-who-have-been-in-care.pdf (nuffieldfoundation.org) (Accessed 28 April 2022)

Sandelowski, M. & Barroso, J. (2003) Writing the proposal for a qualitative research methodology project. *Qualitative Health Research* 13 (6) 781-820 DOI: 10.1177/1049732303255474

Schwant, T. & Gates, E. (2018) Case study methodology. In: Denzin, N. & Lincoln, Y (eds.) *The Sage handbook of qualitative research* (5th edition). Thousand Oaks, Sage, pp. 341-358.

Selwyn, J. (2010) The challenges in planning for permanency. *Adoption & Fostering* 34 (3) 32-37. DOI: 10.1177/030857591003400306.

Sen, R., Featherstone, B., Gupta, A., Kerr, C., MacIntyre, G. & Quinn-Aziz, A. Reflections on social work 2020 under Covid-19 online magazine. *Social Work Education*. 39 (8) 1116-1126. ISSN 0261-5479.

Shephard, M. (2006). *Social work and social exclusion: the idea of practice*. Aldershot, Taylor & Francis.

Silva, E. (2010) Waves of complexity: theory, models and practice. In: De Roo, G. & Silva, E. (eds.) *A planner's encounter with complexity.* Farnham, Ashgate, pp. 309-328.

Smith, H. (2019) Omniscience at the edge of chaos: complexity, defences and change in a children and families social work department. *Journal of Social Work Practice* 33 (4) 471-480. DOI: 10.1080/02650533.2019.1682332

Smith, V. (2011) Ethnographies of work and the work of ethnographers. In: Atkinson, P., Coffey, A., Delamont, S., Lofland, J. & Lofland, L. (eds.) *Handbook of ethnography.* London, Sage, pp 220-232.

Spicker, P. (2011) Ethical covert research. *Sociology* 45(1) 118–133. DOI: 10.1177/0038038510387195

Stacey, R. (1993) *Strategic Management and Organisational Dynamics* London, Prentice Hall.

Stacey, R., Griffin, D. & Shaw, P. (2000) *Complexity and management: fad or radical challenge to systems thinking?* London, Routledge.

Stevens, I. & Hassett, P. (2007) Applying complexity theory to risk in child protection practice. *Childhood.* 14 (1) 128-144. DOI: 10.1177/0907568207072535

Stirling, D. (2014) *Learning and complex adaptive systems.* Available from: http://www.learndev.org/dl/Stirling_Learning-CAS.pdf (Accessed 26 November 2019)

Stone, B., 1998. Child neglect: practitioners' perspectives. *Child Abuse Review*. 7, 87-96

Susskind, R. (2019) *Online Courts and the Future of Justice.* Oxford, Oxford University Press.

Sutton, R. (1997) The Virtues of Closet Qualitative Research. *Organization Science* (8)(1) 97- 106

Szekely, E. & Mason, M. (2019) Complexity theory, the capability approach, and the sustainability of development initiatives in education. *Journal of Education Policy*. 34 (5) 669-685. DOI: 10.1080/02680939.2018.1465999

Teisman,G. & Gerrits, L. (2014) The emergence of Complexity in the art and science of governance. *Complexity, Governance & Networks*. 17–28 DOI: 10.7564/14-CGN2

Telfer, J. (2004) Dissent and consent: negotiating the adoption triangle. In: Hume, L. & Mulcock, J. (eds.) *Anthropologists in the field: cases in participant observation.* New York, Columbia University Press, pp. 71-81.

Tenbensel, T (2015) Complexity and health policy. In: Geyer, R. & Cairney, P. (eds.) *Handbook on complexity and public policy*. Cheltenham, Edward Elgar Publishing, pp. 369-383.

Thomas, C. (2017) *2016 Judicial attitude survey: report of findings covering salaried judges in England & Wales Courts and UK Tribunals.* UCL Judicial Institute. Available from: Microsoft Word - JAS 2016 Report 7 February 2017.docx (judiciary.uk) (Accessed 28 April 2022)

Tickle, L. (2020) Preface to Bellamy, C. *The 'secret' family court: fact or fiction?* Bath. Bath Publishing. pp. xv-xvii

Tracy, S. (2007) Taking the plunge: a contextual approach to problem-based research. *Communication Monographs*, 74 (1), 106-111. DOI: 10.1080/03637750701196862

Tracy, S. (2014) Fieldwork horse-assery: making the most of feeling humiliated, rebuffed, and offended during participant observation research. *Management Communication Quarterly*, 28(3) 458–465. DOI: 10.1177/0893318914536965

Tracy, S. (2020) *Qualitative research methods: collecting evidence, crafting analysis, communicating impact.* Hoboken, NJ. Wiley Blackwell

Transparency Project (2020a) *Open letter from NGOs and academics on open justice in the Covid-19 emergency.* Available from: https://www.transparencyproject.org.uk/open-letter-from-ngos-and-academics-on-open-justice-in-the-covid-19-emergency/ (Accessed 2 July 2020)

Transparency Project (2020b) *Guide to remote court hearings.* Available from: REMOTE-COURT-HEARINGS-GUIDE-FINAL.pdf (transparencyproject.org.uk) (Accessed 17 June 2020)

Trowler, I. (2018) *Care Proceedings in England: the case for clear blue water.* University of Sheffield. Available from: https://www.sheffield.ac.uk/polopoly_fs/1.812158!/file/Sheffield_Solutions_Clear_Blue_Water_Full_Report.pdf (Accessed 22 February 2020)

Tunnard, J., Ryan. M., & Harwin, J. (2016) *Problem solving in court: current practice in FDACs in England. Final report.* Lancaster University. Available from: FDAC_COURT_OBS_REPORT_2016.pdf (lancs.ac.uk) (Accessed 22 August 2022)

Turner, A., Blackwell, A. & Carter, C. (2020) *Covid-19: how has social work responded to the coronavirus crisis?* Community Care. Available from: Covid-19: how has the social care sector responded to the coronavirus crisis (communitycare.co.uk) (Accessed 29 June 2020)

Tyler, I. (2020) *Stigma: the machinery of inequality.* London, Zed Books.

Uldam, J. & McCurdy, P. (2013) Studying Social Movements: Challenges and Opportunities for Participant Observation. *Sociology Compass* 7(11) 941–951. DOI: 10.1111/soc4.12081

Urry, J. (2003) Social networks, travel and talk. *British Journal of Sociology* 54 (2) 155–175 DOI: 10.1080/0007131032000080186

Van Maanen, J. (2011a) Ethnography as work: some rules of engagement. *Journal of Management Studies* 48 (1) 218-234 DOI: 10.1111/j.1467-6486.2010.00980.x

Van Maanen, J. (2011b) *Tales of the field (*2nd edition*).* Chicago, University of Chicago Press.

Van Maanen, J. (2006) Qualitative Research. *Organizations and Management: An International Journal* 1 (1) 13-21. DOI 10.1108/17465640610666615

Van Manen, M. (2007) Phenomenology of Practice. *Phenomenology & Practice* 1 (1), 11 – 30 DOI: 10.29173/pandpr19803.

Wade, J. (2008) The ties that bind: support from birth families and substitute families for young people leaving care. *British Journal of Social Work*, (38), 39-54. DOI: 10.1093/bjsw/bc1342.

Wade, J., Sinclair, I., Stuttard, L. & Simmonds, J. (2014) *Investigating Special Guardianship: experiences, challenges and outcomes.* Available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/377448/DFE-RR372_Investigating_special_guardianship.pdf (Accessed January 12 2020)

Walton, M. (2016) Setting the context for using complexity theory in evaluation: boundaries, governance and utilisation. *Evidence & Policy* (12) (1) 73–89. DOI: 10.1332/174426415X14298726247211

Wastell, D., White, S., Broadhurst, K. Peckover, S. & Pithouse A. (2010) Children's services in the iron cage of performance management: street-level bureaucracy and the spectre of Švejkism. *International Journal of Social Welfare.* 19, 310–320. DOI: 10.1111/j.1468-2397.2009.00716.x

Watson, T. (2011) Ethnography, reality, and truth: the vital need for studies of 'how things work' in organisations and management. *Journal of Management Studies* (48 (1) 202-217 DOI: 10.1111/j.1467-6486.2010.00979.x

Webb, C., Bennett, D. & Bywaters, P. (2022) Austerity, poverty, and children's services quality in England: consequences for child welfare and public services. *Social Policy and Society,* 1-22. DOI:10.1017/S147474642200001X

Webb, T (2018) Asylum and complexity: the vulnerable identity of law as a complex system. In: Murray, J., Webb, T. & Wheatley, S. (eds.) *Complexity Theory and law: mapping an emergent jurisprudence.* London, Routledge, pp.66-88.

Webb, T. (2015) Critical legal studies and a complexity approach: some initial observations for law and policy. In: Geyer, R. & Cairney, P. (eds.) *Handbook on complexity and public policy*. Cheltenham. Edward Elgar Publishing, pp. 48-64.

Webb, T. & Geyer, R. (2019) The drafters' dance: the complexity of drafting legislation and the limitations of 'Plain Language' and 'Good Law' initiatives. *Statute Law Review*. DOI: 10.1093/slr/hmz008 (Accessed 5 December 2019)

Welbourne, P (2016) Adversarial courts, therapeutic justice and protecting children in the family justice system. *Child and Family Law Quarterly* 28 (3) 205-222.

Wellin, C. & Fine, G. (2011) Ethnography as work: career socialization, settings and problems. In: Atkinson, P., Coffey, A., Delamont, S., Lofland, J. & Lofland, L. (eds) *Handbook of ethnography.* London, Sage, pp. 323 - 335

Whittaker, A. (2018) How do child-protection practitioners make decisions in real-life situations? Lessons from the psychology of decision making. *British Journal of Social Work* 48, 1967–1984. DOI: 10.1093/bjsw/bcx145

Wijedasa, D. & Selwyn, J. (2017) Examining rates and risk factors for post-order adoption disruption in England and Wales through survival analyses. *Children and Youth Services Review.* 83, 179-189. DOI:10.1016/j.childyouth.2017.10.005

Woolf, N., & Silver, C. (2018) *Qualitative analysis using NVivo: the five level QDA method.* New York, Routledge.