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Communication and Complexity: Layperson Decision-Making in the Scottish Children's Hearings System

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Abstract

The Children's Hearings system is a unitary, non-court-based legal tribunal system responding to child protection and youth justice concerns in Scotland. Decision-making is undertaken by three lay volunteers called panel members, and the participation of children and young people is viewed to be central to the process. Despite the importance of the decisions being made, there has been little examination of how panel members experience the decision-making process or how it can be theorised.

An ethnographic research methodology was employed to explore how panel members make decisions and what helps or hinders the process. Observations of 67 children's hearings and pre-hearing panels, and qualitative interviews with 20 panel members, were undertaken. Panel member decision-making involves two key processes; making sense of and forming judgements based on information presented in advance of a hearing, and exploration of this information in the context of a face-to-face meeting with the child, parents, social worker and other relevant people. Findings highlight the crucial role of written reports in preparing panel members for a hearing and the barriers to effective communication, the centrality of emotion and the need for panel members to manage their own and others' emotional responses, and the importance of language use and interactional competence in managing hearings skilfully. These features affect how children's views are heard and considered in hearings.

This study addresses a gap in the literature by providing a detailed examination of the communicative and interactional processes central to panel member decision-making and locating these findings within wider judgement and decision-making frameworks. Recommendations aimed at supporting the decision-making process are proposed. The findings make a contribution to current knowledge and understanding of decision-making in child welfare proceedings and how lay decision-makers make sense of and reach decisions regarding the care of a child.

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Lay Summary

The Children's Hearings system is a non-court-based legal tribunal system which makes decisions about children and young people in Scotland if they need care and protection or have got into trouble. Three volunteers from the local community, known as panel members, meet with children and their families in a meeting called a children's hearing. The panel members make decisions about what is in the child's best interests. Despite the importance of these decisions, little is known about how panel members experience the process.

To study this, observations of 67 children's hearings and pre-hearing panels alongside qualitative interviews with 20 panel members were carried out. There are two key parts to the decision-making process. The first is how panel members make sense of the information they receive before a hearing. The second is when panel members meet and talk to children and their parents, as well as the social worker and other relevant people. The study found that firstly, written reports are important because they help panel members prepare for a hearing. However, making sense of the reports was sometimes difficult and this impacted on decision-making. Secondly, there could be a lot of emotion in hearings. This meant that panel members needed to manage how they felt and help other people manage their emotions. Thirdly, the findings showed panel members needed to use clear language, explain legal processes and make children and families feel that their views were important. These features affected how children's views were heard and considered.

This study shows that how people talk, feel and interact affects how children and families participate in hearings and how panel members make decisions. These findings connect to ideas and thinking from other studies in judgement and decision-making. They suggest ways in which panel member decision-making can be supported, and contribute to knowledge and understanding of decision-making in child welfare proceedings and how lay decision-makers make sense of and reach decisions regarding the care of a child.

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1 Introduction

1.1 Overview

This thesis uses ethnographic methods to explore panel member decision-making in the Children's Hearings system in Scotland. It seeks to provide an understanding of the process by illuminating the everyday nature of how panel members make decisions in a children's hearing. In doing so, it contributes to an understanding of what is involved in the decision-making process for panel members and the implications for the participation in, and outcomes of, hearings for children and their families.

Every year in Scotland, thousands of children and young people¹ are referred to the Children's Hearings system because of concerns about how they are being cared for or how they are behaving (SCRA, 2023a). Within this tribunal system, Children's Reporters investigate these referrals and decide if a hearing is required. In the twelve-month-period between 1 April 2022 and 31 March 2023, 22,341 hearings were arranged for 10,128 children (SCRA, 2023a). In a hearing, three volunteer decision-makers known as panel members read reports and meet with children, families, social workers and other professionals before making decisions about a child (Norrie, 2022). The seemingly simple option the panel members have at their disposal – is a legal order required, or not? – greatly belies the complexity of the decision-making involved. Where should the child live? If this is away from home, should the place of residence be disclosed to parents? If this is away from home, does contact with family members need to be regulated? If yes, how should this be done - does it need to be supervised, and how frequently should it occur? What can panel members do if a child is not attending school or has committed an offence? Should a child be placed in secure accommodation? Should a child be permanently cared for away from home? Panel members face all of these questions and more, for while social workers must provide background reports outlining a child's circumstances and their recommendations for that child, it is the panel members' role to evaluate the evidence put before them and to make a decision (Norrie, 2022).

¹ For the purpose of this thesis, the definition of a child corresponds to the legal parameters of the Children's Hearings system. This is normally until 16 years of age but can be until 18 if a legal order is in place and deemed necessary between the ages of 16 and 18 (Norrie, 2022). The term young person is sometimes used to more specifically indicate a child of 12 or over.

Despite the profound implications of the decisions panel members make in children's hearings, there is a surprisingly limited body of academic literature on the subject. Most empirical research which has included a focus on panel members or their decision-making has tended to do so only as part of a wider exploration of the functioning of the children's hearings system (e.g. Martin *et al.*, 1981; Hallett and Murray, 1998; Kurlus *et al.*, 2019). Few projects have made this their sole emphasis; since the inception of the hearings system in 1971 this has been restricted to only a handful of studies (Smith, 1977; Smith and May, 1980; Walker *et al.*, 2013; Robertson, 2022), and of these, only the data collected by Smith and May in the late 1970s involved observational methods.

From this existing body of research, challenges in panel member decision-making have been identified that concern issues of the provision of information, professional trust, participation, knowledge and understanding of issues affecting children and their families, the role of legal representatives, and operational aspects of the system.

Overall, the use of direct observation as a research method has been minimal (Bruce and Spencer, 1976; May and Smith, 1980; Smith and May, 1980; Hallett and Murray, 1998; Griffiths and Kandel, 2000a). It has been over twenty years since observational data from children's hearings was last collected for any academic project, with the papers published by Griffiths and Kandel relying on data collected from observing hearings between 1997 and 2000 (Griffiths and Kandel, 2000a, 2009a). There has been no substantive examination of decision-making regarding birth family contact, even though this area has been acknowledged as particularly challenging for panel members (Henderson and Hanson, 2012). Nor has any study sought to explore panel member decision-making by drawing on any of the vast literature on judgement and decision-making which exists.

These gaps in research attention stand in marked contrast to the level of legislative, policy and societal changes which have occurred in the years since the first hearing took place. The *Social Work (Scotland) Act 1968*, which introduced the Children's Hearings system by law, remained its legislative basis for a quarter of a century, but was then followed by a significant increase in legislative activity, particular in the last fifteen years. While these new pieces of legislation did not change the core set up of lay decision-making, they introduced a range of other changes which affected the context in which panel members make decisions, such as the increased recognition of children's

agency, the increased focus on children and parents' legal rights, a widening of grounds of referral² taking into consideration changes in understanding of issues such as the impact of domestic abuse on children, increased access to legal aid for children and families, changes in how panel members are recruited and supported, and the raising of the age of criminal responsibility (Norrie, 2022).

Alongside these gaps in knowledge and understanding of panel members and their decision-making is the personal impetus for this study. This arose from my work with children and families where, firstly as a residential child care worker, I became aware of the huge emotional impact of birth family contact for children no longer living at home, and the complexity involved in making decisions regarding this. The challenges of prioritising a right to family life whilst also seeking to protect children from further harm were at the heart of these difficulties. Later, student placements while undertaking my Masters in Social Work, firstly in a children and families practice team, and then with an independent fostering and adoption agency, added different perspectives on the issue and prompted me to research birth family contact for my dissertation. In doing so, I discovered that despite the central role of the Children's Hearings system in deciding on birth family contact for a large number of children looked after away from home every year, surprisingly little research had been undertaken on the decision-makers – the panel members – and what it was like for them to make decisions about the children and young people who sat before them. It is these experiences, and gaps in knowledge and understanding, which prompted this research.

1.2 The Study

This study set out to address the following core question: how do panel members experience the decision-making process? Drawing on existing literature, I also sought to explore:

- How do panel members account for the decisions they make, particularly with regard to birth family contact?
- What do panel members find challenging about decision-making?

² The legal reasons under which a child or young person can be referred to the Reporter.

- What leads panel members to agree or disagree with social work or other professional recommendations?

An ethnographic approach was employed to address the research questions.

Observations of 56 children's hearings and 11 pre-hearing panels alongside semi-structured interviews with 20 panel members in a children's hearings centre in a city in Scotland, herein referred to as City A. In line with an ethnographic approach to research, interviews and discussions with seven other key informants also took place in order to extend my understanding of the research context. Plans to undertake research in two further hearings centres were prohibited by the start of the Covid-19 pandemic in 2020. Instead, the original research plan was modified to include additional follow-up interviews with panel members in City A in 2021.

There was a clear commitment to exploratory research in this study, which meant being attentive to the issues raised by panel members as well as seeking to investigate issues raised by existing literature and my own identification of salient issues. This is reflected in the diverse nature of the findings chapters as well as a shift away from a specific focus on birth family contact towards issues relating to decision-making more broadly.

1.3 Structure of Thesis

The rest of this thesis is structured as follows. In Chapter 2, I provide an overview of the Children's Hearings system, setting out the legislative and comparative context before exploring the recruitment and role of the panel member, the children and young people referred to the Children's Reporter, and the decisions regarding supervision that panel members make.

Chapter 3 provides a review of two literatures. Firstly, I explore what is already known about panel member decision-making. I discuss key issues identified from the literature from the 1970s onwards regarding some of the challenges in decision-making. I contend that these can largely be seen to involve issues with people and interactions, information, or organisational factors. I also argue for the inclusion of early as well as more recent research because of the way it highlights the enduring nature of some issues. Secondly, I turn towards the wider literature on judgement and decision-making. In contrast to the research on panel member decision-making, this encompasses a body of work too vast to permit any level of comprehensive review. Instead, I outline a

number of key theoretical ideas from this research which I argue have relevance for how panel members make decisions. In particular, I discuss the notions of bounded rationality and satisficing, models of decision-making, the role of heuristics and biases, sensemaking under conditions of uncertainty, and the role of intuition. I conclude the discussion by looking at how emotion, and the management of emotion, has been conceptualised across disciplines.

In Chapter 4, I outline the methodology for this study, providing a description of ethnography and making an argument for why this qualitative approach was well-suited to the exploratory nature of the research. I conclude by providing details of the research design, including how data collection and analysis were carried out and what ethical considerations were involved.

Chapters 5 to 8 introduce my research findings. Chapter 5 explores how panel members are informed about the child and gain an understanding of the nature of the concerns and the decisions they are being asked to make. Chapter 6 looks at the dynamics of the hearing itself, examining aspects such as the use of language and how panel members manage the interactions, and the relevance of these issues for participation. Chapter 7 explores the centrality of emotion in children's hearings and what this means for decision-making, while Chapter 8 completes the presentation of the findings by showing how children's views are heard (or not) in the decision-making process, both when they attend hearings and in their absence.

The thesis is brought to a close in Chapter 9 with a summary of the findings and a discussion on the implications for practice. Overall reflections on the study, and some of its limitations are reviewed, before the chapter concludes with a consideration of possibilities for future research.

2 What is the Children's Hearings System?

This introductory chapter is intended to familiarise the reader with the Children's Hearings system. It provides an outline of the architecture and history of the system, gives an overview of key processes and procedures, introduces the legal context, and locates it within the wider comparative context of legal decision-making forums for child welfare and protection. It explains the role and recruitment of panel members, and provides background information about the children and young people brought before the system, before concluding with a summary of key aspects of the decision-making task for panel members. In doing so, it sets the scene for the subsequent chapters which tell a more complex story of decision-making practice.

2.1 Background to the System

Scotland has a distinct legal system separate from the other countries of the United Kingdom. This means that despite some shared aspects, there are key differences in law and procedure, the Children's Hearings system being one such example (Martin *et al.*, 1981; Reid and Edwards, 2009). The system was first conceived of in the 1960s because of a desire to resolve the inadequacy of existing judicial systems in responding to what was then referred to as juvenile delinquency (Asquith, 1983). At a time when youth offending was viewed to be on the increase, there was a concerning lack of separation of children and young people from adults in the criminal justice system in Scotland. This led to a Scottish judge called Lord Kilbrandon being tasked, along with colleagues, with addressing these concerns.

Investigating these concerns, Kilbrandon concluded that welfare issues were central to any charge against a child or young person and that courts were unable and unsuited to addressing these. In 1964, a series of proposals aimed at addressing the issues were subsequently set out in a report entitled '*Report of the Committee on Children and Young Persons, Scotland*', now universally referred to as the Kilbrandon Report, of which one of its key recommendations was the establishment of the Children's Hearings system (Kilbrandon, 1964). Enacted into law via the *Social Work (Scotland) Act 1968*, the Children's Hearings system began operating on 15 April 1971. It replaced the existing

court system for most cases involving children and young people under the age of 16, with courts retaining a role only in specific circumstances such as adjudicating in the case of disputed grounds³, or in serious criminal proceedings (Asquith, 1983; Norrie, 2022).

In the early days of the Children's Hearings system, the majority of referrals were offence-related (Martin *et al.*, 1981); however, a reversal of this trend by the 1990s in favour of care and protection referrals has proved enduring, with referral issues involving concerns for children who have experienced, or may be at risk of experiencing, abuse and neglect, now significantly out-numbering those involving offences (Waterhouse and McGhee, 2002; McGhee and Waterhouse, 2007, 2012; Kurlus *et al.*, 2014).

2.2 Operation of the System

The Hearings System has a number of key features. Firstly, as noted above, it is non-court based. Instead of a courtroom, hearings take place privately and more informally in what are known as hearing centres (Norrie, 2022). Secondly, there are no judges at these hearings. Rather, a panel comprised of three lay people known as panel members, volunteer without payment to meet and make decisions regarding a child's circumstances. Thirdly, the system provides a unitary response to children who may be in need of care and protection and those who may have offended; there are no separate youth and family courts as in other UK jurisdictions (Norrie, 2022).

The Children's Hearings system is dependent on two key non-departmental public bodies to operate effectively, The Scottish Children's Reporter Association (SCRA), and Children's Hearings Scotland (CHS). The Scottish Children's Reporter Association is responsible for overseeing the work of Children's Reporters and the operational running of hearing centres and additional satellite locations in remote or rural areas across Scotland (SCRA, 2023b). A reporter's role includes investigating referrals, determining if compulsory measures of supervision may be required, and whether a hearing should be arranged for a child (Kurlus *et al.*, 2014). Children's Hearings Scotland, created under the *Children's Hearings (Scotland) Act 2011* and operational

³ Grounds are the legal reasons why a child might be referred to a Children's Hearing

since 2013, oversees the recruitment, training and support of panel members to sit on each hearing. CHS liaises closely with SCRA to ensure the effective running of the Hearings System.

When a hearing is arranged, there are two key stages for panel members: advance provision of background information, and the meeting itself. While a reporter will often seek reports from other agencies, only the local authority is legally obliged to provide one (Norrie 2022). There is no national, standard template; instead, individual local authorities rely on their own pro forma reports or utilise a multi-agency version that incorporates information from other agencies such as health and education (Kurlus *et al.*, 2014). Generally, social work reports should aim to contain information in line with the *Getting it Right for Every Child* (GIRFEC) National Practice Model, a shared wellbeing and assessment policy framework for children (Scottish Government, 2022). This typically includes information about the child, family circumstances and wider environment, a chronology of significant events, an assessment of risk and need, the views of the child and other relevant persons, and a clear plan and recommendations for future circumstances (SCRA, 2015). Unless information is restricted (and there are clear legal parameters for establishing whether this can be justified), these reports must be provided to the child if over the age of 12 and all relevant persons, that is, any parent, or other person with parental responsibility for the child (Norrie, 2022). Alongside the social work report, panel members also receive other documents such as previous decisions and reasons, and any other information from a child, parent or other professional if provided.

In the hearing itself, panel members sit with the child (or children if a hearing is being held for a sibling group), parents, and all other relevant parties to hear their views and discuss the concerns and recommendations raised in the reports. A children's reporter is also present but does not participate except to record the legal decisions and provide legal advice if requested (Norrie, 2022). At the end of a hearing, panel members are required to make a decision to either implement, continue or discharge a legal order, as will be discussed further in Section 2.5.

2.3 Panel Members: Then and Now

Panel members are volunteer lay decision-makers. Lay person decision-making is central to the Children's Hearings System; it arguably represents ideas of participatory democracy and a more inclusive form of justice where peers drawn from the same community make decisions about others in that community (Gibbs and Kirkby, 2014). Kilbrandon's original vision was that panel volunteers would be local people who 'either by knowledge or experience were considered to be specifically qualified to consider children's problems' (Kilbrandon, 1964). Subsequent government guidance expanded on this, emphasising not only the importance of community representation but the need for skilled interlocutors able to interact with children and families (Martin *et al.*, 1981).

In the early days, training and recruitment of panel members was a regional activity involving local Children's Panel Advisory Committees (CPAC), a group of individuals consisting of a mix of local authority and government representatives (Smith and May, 1971; Martin *et al.*, 1981). Initial enthusiasm for volunteering as a panel member was high, with reports of 3-4 applicants for every place in 1970 (Martin *et al.*, 1981). However, criticism of the recruitment process and representativeness of panel members was also a persistent feature. Gaps between aspiration and reality in terms of recruitment from a broad section of the community were identified (Smith and May, 1971; Higgins, 1972; Mapstone, 1972; Martin *et al.*, 1981). Educated, middle-class individuals were over-represented, many had little experience of the social conditions faced by the majority of families who attended a hearing, and expectations around recruitment, selection and the panel member task in the hearings served to indirectly restrict panel membership (Mapstone, 1972; Smith and May, 1971). There was also a lack of clarity with regard to the 'personal qualities' the Kilbrandon Report had said recruitment should be based on (Kilbrandon, 1964, p. 28). This vagueness was seen to play out in how panel members were recruited, with observations of one recruitment process in Glasgow in the early 1970s noting the following:

It seems the selectors worked largely on the basis of exclusions. They ruled out the over-aggressive, the over-talkative, those who were too quiet or too timid and those who were too slow. Professor Mackenzie [a member of the Glasgow CPAC] described it as a game of balancing social representativeness, good personality and social skills.

Higgins (1972, p. 25)

Another challenge to recruitment involved the demands of the role. In her study of early panel member recruitment in Fife, Mapstone (1972) commented that the panel member task was presented as deceptively simple in terms of outcomes but that the process was in reality far more complex. It required being able to absorb a 'massive amount of information, both written and verbal', weigh up conflicting recommendations, 'achieve speedy and effective communication with two adults and their child who are likely to be under considerable stress and may be in open conflict with each other' and 'draw out and understand relevant information from them' before reaching a decision (Mapstone, 1972, p. 448). She argued that the ability to perform a complex professional task needed to take priority over community representativeness if there were tensions between the two in the recruitment process.

Despite some of these concerns, panel member recruitment remained very much a local activity until 2013 when CPACs were replaced by Area Support Teams (ASTs) and a single, national organisational entity to oversee them. Children's Hearings Scotland (CHS), led by a National Convener, was introduced under the *Children's Hearings (Scotland) Act 2011*, with the stated purpose of improving consistency and introducing national recruitment and training processes, as well as increasing support for panel members (SCRA, 2019a). Other early records also make reference to the need to standardise and improve training and recruitment but do not acknowledge what any of the inconsistencies were (Scottish Executive, 2002).

Upon recruitment, panel members now undertake a national training programme provided through West Lothian College which leads to a professional development award (PDA) as well as other ongoing core learning and development (CHS, 2021). The current framework for recruitment outlines a range of competencies required of individual panel members ranging from knowledge of principles and legal procedures through to skilled communication and an ability to manage hearings and facilitate and encourage participation (CHS, 2023). Beyond official documentation however, there is little information available on the current realities of recruitment and training and what 'personal qualities' are most valued in practice. While research has highlighted the views of children, families and other hearing participants as to what makes a 'good' panel member, such as feeling listened to (Cook, 2015; SCRA, 2016) and having

decisions explained well (Kurlus *et al.*, 2014), in general no academic study has taken the role of the panel member as their sole or main focus or sought to more comprehensively unpick the skills and attributes seen to be required to be a 'good' panel member and what issues may otherwise be present.

Although there has been little external examination of panel member practice, there is still seen to be a need for improvement. In 2020, the Independent Review of Care in Scotland, commissioned by the Scottish Government to look at how to improve the care system, produced a report called *The Promise* (Independent Care Review, 2020). This report included a call for a significant overhaul of the Children's Hearings system and led to the establishment of a working group tasked specifically to explore how the system could be improved. In May 2023, a report called *Hearings for Children* was published, setting out proposals to the Scottish Government for a radical redesign of the Hearings system (Hearings System Working Group, 2023). Amongst its conclusions was the view that the needs of families referred to the Children's Hearings system are increasingly complex and that decision-making should not rest entirely with an unpaid, lay volunteer workforce. Some recommendations which would have affected the role and recruitment of panel members, such as the proposal to professionalise the role of the panel chair, were subsequently rejected by the Scottish Government, due to the prohibitive costs that would be involved (Scottish Government, 2023a). However, there is an overall commitment to an agenda of improvement which may see other less radical changes to the role of panel members being implemented.

2.4 Children and Young People

The role of a panel member is to make decisions regarding children and young people. The vast majority of those referred to the system come from the police, a pattern that has remained consistent over time (Hallett and Murray, 1998; SCRA, 2023a). In the period between 1st April 2022 and 31st March 2023, 79.7% of the 19,904 referrals (accounting for 10,981 children), were made by the police, followed by social work at 12.2% and education at 5.1% (SCRA, 2023a). Any person may refer a child to the children's reporter, but there are statutory criteria for referral: the child must be in need of 'protection, guidance, treatment or control', and compulsory legal measures may be necessary (Norrie, 2022, p.64). Section 67 of the *Children's Hearings (Scotland)*

Act 2011 provides a list of the different grounds under which at least one must apply before a child can be referred to a hearing. The seventeen different categories of concern include lack of parental care, schedule 1 offences committed in respect of the child,⁴ and that a child has committed an offence.

While local authorities and the police have a duty to refer when these criteria apply, hearings are not arranged for every child referred. Reporters determine if compulsory measures of supervision are required and a hearing should be arranged (Kurlus *et al.*, 2014). The first hearing is called a grounds hearing. In this hearing, the grounds (legal reasons) for the referral are considered. In hearings where grounds are met and compulsory measures of care are deemed necessary, a child can be accommodated via a legal order known as a Compulsory Supervision Order (CSO) under the *Children's Hearings (Scotland) Act 2011*. It is at this point that a child is deemed to have become 'looked after'. The term looked after child (LAC) is a legal one that indicates that a child is in the care of the local authority in some way.⁵ While there are other legal routes to becoming looked after,⁶ the most common is via the Children's Hearings system.

For children looked after via the Children's Hearings system, some are made subject to a CSO but remain at home. This means while there are no conditions on their place of residence there is compulsory state involvement regarding the monitoring and support of their care. For others, decisions may be made for them to live away from home due to the impact of their family circumstances on them. Regular hearings must take place at least once a year to review a CSO until the order is terminated. Children may be 'accommodated' in a range of settings which include with friends, family, or in foster or residential care (Scottish Government, 2023b). The most recent figures show that 5,087 children across Scotland were accommodated away from home on Compulsory

⁴ Under the Criminal Procedure (Scotland) Act 1995 a schedule 1 offence may include assault, sexual offence, ill treatment, neglect, exposure, abandonment, or any offence involving bodily injury in a manner likely to cause unnecessary suffering (Scottish Government, 2013 - <https://www.gov.scot/publications/training-resource-manual-volume-1-legislation-procedures/pages/24/>)

⁵ Under the *Children (Scotland) Act 1995*

⁶ Some children are looked after on a voluntary basis under section 25 of the Children (Scotland) Act 1995. This may be because those with parental responsibilities have consented for their child to become accommodated, or there is no one with parental responsibilities able to care for the child. A small number of children initially become looked after because of emergency measures, such as a Child Protection Order (CPO). This is a short-term measure granted by a sheriff in court. A children's hearing must be held within 8 working days if there is a need for the child to remain looked after (Henderson *et al.*, 2015). A local authority may also have made a permanency order for a child under section 80 of the Adoption and Children Act 2007 (Scot Gov, 2023)

Supervision Orders in the period 1 April 2022 to 31 March, 2023 (SCRA, 2023a). For these children, key decisions have to be reached by panel members in the Children's Hearings system regarding their care.

2.5 What Decisions do Panel Members Make?

The key task for panel members is to decide if compulsory legal measures of supervision are required for a child. They have a choice of whether to implement, continue or dispose of a legal order, known as a Compulsory Supervision Order (CSO), under the *Children's Hearings (Scotland) Act 2011*. Three overarching legal principles must be taken into account; the safety and welfare of the child is the paramount consideration, panel members must give the child an opportunity to express a view, and take that view into account and the principle of minimum intervention must be applied – an order should only be made if better for the child than no order (Norrie, 2022).

There are also a number of other essential legal processes which panel members must follow in a hearing. These include, for example, considering whether a child or other relevant person should be legally excused from attending a hearing if they are not present, or, in the case of relevant persons, if panel members should decide instead to proceed in their absence. As well as a Compulsory Supervision Order, panel members can also make interim orders, the rarely used Medical Examination Order or a warrant to secure attendance, and they can also appoint a safeguarder or request panel member continuity at a child's next hearing (Norrie, 2022). A range of measures may also be attached to a CSO or ICSO. These include stipulating where a child should reside, if non-disclosure of information should occur, and whether a contact direction is required. Birth family contact is a key example of a decision which may require significant discussion and debate in a children's hearing. In order to support them with their practice, panel members can access a publicly-available online manual called the Practice and Procedure Manual. It provides a comprehensive guide to the legal tests, procedures, orders and measures which may be involved depending on the nature of the individual hearing, its length demonstrating the level of complexity involved in the decision-making process (CHS, 2022a). Chapter 3 provides a review of the literature and discusses the challenges of decision-making in greater detail.

2.6 The Legislative Context

The decisions made by panel members are underpinned by an extensive legislative framework which has seen significant changes since the introduction of the Children's Hearings system. This section provides an overview of these key changes as they pertain to panel member decision-making.

Social Work (Scotland) Act 1968

The Children's Hearings system was introduced into law by the *Social Work (Scotland) Act 1968*. This Act remained the legislative basis for the system for around a quarter of a century before a number of issues arose highlighting limitations in existing legal provision. These included increased awareness of the need to protect children's and parents' legal rights following the removal of children from Orkney in February 1991, and the UK's ratification of the *UN Convention on the Rights of the Child (UNCRC)* that same year (Clyde, 1992; Norrie, 2022). This led to the first major change in child care legislation, the introduction of the *Children (Scotland) Act 1995*.

Children (Scotland) Act 1995

While the basic function of individual hearings remained largely unchanged, the *Children (Scotland) Act 1995* sought to protect the legal rights of children and their parents, strengthening the legal basis for ensuring children's views are considered in legal proceedings as well as rights, and the rights of parents 'to maintain personal relations and direct contact with the child on a regular basis', in so far as this is in the child's interests (Norrie, 2022). Further scrutiny and challenge came soon after, with the introduction of the *Human Rights Act 1998* and the creation of the Scottish Government under the *Scotland Act 1998*. These legislative changes resulted in domestic legislation becoming open to challenge if deemed incompatible with the European Convention on Human Rights (ECHR), prompting Scottish courts to try and pre-empt the possibility of this occurring by addressing areas of incompatibility (Norrie, 2022). In the Hearings System, legal representation and participation rights were subjected to particular scrutiny. These issues, alongside factors such as a desire to ensure the law was consistent with the overall policy commitment to Scotland's children as enshrined in *Getting it Right for Every Child (GIRFEC)*, contributed to the impetus to improve

existing legislation and led to the eventual introduction of the *Children's Hearings (Scotland) Act 2011* (Tisdall, 2015).

Children's Hearings (Scotland) Act 2011

This Act brought about major changes to the operation of children's hearings, including new grounds of referral, raising these from the eleven contained in the *Children (Scotland) Act 1995* to the current number of seventeen. These grounds, often referred to as 'the section 67 grounds' due to their position in the Act, included new additions which acknowledged the risks posed to children by having a connection to someone who has carried out domestic abuse, reflecting wider societal changes in understanding regarding the impact of domestic abuse on children. Changes in legal terminology, the provision that the appointment of a safeguarder be considered at every hearing, the introduction of pre-hearing panels (short meetings which allow panel members to consider certain issues in advance of a hearing such as whether a child should be excused from attending), and a widening of the access to legal aid for children and their families were also introduced.

The 2011 Act also resulted in the creation of the single entity, national organisation called Children's Hearings Scotland, as already discussed, changing the way in which panel members were recruited, trained and supported (Norrie, 2022). Finally, the Act made it compulsory for a children's hearing to consider contact in relation to a child, placing a responsibility on panel members to ensure a child is given the opportunity to express a view, as far as is practicable, taking age and maturity into account, and having regard to any of the views expressed.⁷ The accompanying *2013 Rules of Procedure in Children's Hearings*⁸ set out in more detail the procedures designed to increase the child's participation and right to give a view, including, for example, allowing a child to attend and participate by telephone or video-link, and stating that the author of any report or other document provided to a hearing must include any views given by a child to them.⁹

⁷ Except when a sheriff is considering the need for a child protection order (Norrie, 2022).

⁸ https://www.legislation.gov.uk/ssi/2013/194/pdfs/ssipn_20130194_en.pdf

⁹ (Part 3 (8), The 2013 Rules).

Children and Young People (Scotland) Act 2014

This Act saw further embedding of certain UNCRC rights in domestic legislation, such as Article 12 of the UNCRC which states children and young people have a right to be heard in matters affecting them and to participate when the matters affect the life of their family community and society.

Age of Criminal Responsibility (Scotland) Act 2019

The *Age of Criminal Responsibility (Scotland) Act 2019* increased the age of criminal responsibility in Scotland from eight to 12,¹⁰ meaning children under this age can no longer be referred to the hearings system for a criminal offence.

Children (Scotland) Act 2020

This Act introduced important new participation rights in Children's Hearings for siblings and other family members, including the right to be notified of the hearing, provided with reports, and to attend the hearing. For panel members, this means that when making any contact direction, contact with the child's siblings must be considered. The Act also signalled a shift in how a child's agency is conceptualised by removing the presumption of age in relation to children giving their views and making it clear that any child viewed to be capable of forming and giving a view can do so, placing an obligation on panel members as decision makers to give any child the opportunity to express a view, in the manner the child prefers, on any decision that impacts on the child's life.

United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act (2024)

This Act, subject to considerable scrutiny in the Supreme Court due to tensions between reserved and devolved legislation, has recently come into force, ensuring children's rights as outlined in the UNCRC are now legally protected. This new act further strengthens the duty of children's hearings to ensure: the expression and inclusion of

¹⁰ This piece of legislation clarifies a position on not prosecuting children under the age of 12. This had been in place since the introduction of the Criminal Justice and Licensing (Scotland) Act 2010, but children could still be referred to the Children's Hearings system by the Procurator Fiscal for the offence.

children's views; for these children to feel respected, heard and valued; and for optimal decision-making to take place ensuring children's needs and rights are considered (CHS, 2020).

Children (Care and Justice) (Scotland) Bill

Further changes with implications for panel member decision-making are also expected via the *Care and Justice (Scotland) Bill* which includes a proposal that all children aged 16 and 17 are automatically referred to the Children's Hearings system if required, regardless of whether the referral ground is welfare or offence-related (Nisbet and Lightowler, 2024).¹¹

This section, in outlining the number of legislative changes pertaining to the Children's Hearings system since its inception in 1971, highlights the increasingly complex nature of the legislative landscape against which panel members engage in decision-making. This increase in legislation was also acknowledged in a SCRA report in 2018 which noted an 88% increase in the number of pieces of legislation relevant to their work and the operation of the Hearings system (Woods *et al.*, 2018). The report acknowledges the impact of this increased legislative complexity not only on children and their families but for panel members working in the system and involved in these legal processes.

There are two particular points to make here. Despite the increased focus on children's rights, increased legal representation for children and relevant persons, and changes to legal grounds and terminology, the core operation of the panel itself as a lay decision-making tribunal has remained largely unchanged: it continues to involve three volunteers from the local community meeting with children and families to make decisions about the children's welfare. Secondly, despite the centrality of the panel members as decision-makers and their role in upholding the rights of children in ensuring their voice is heard and their participation prioritised, very little is known about how this is enacted in practice, as Chapter 3 will demonstrate in greater detail. It is a striking oversight, particularly in light of the overwhelming focus on children's rights and large number of legislative changes in Scotland in recent years.

¹¹ Currently, only young people aged 16 or 17 and already on a Compulsory Supervision Order can be referred.

2.7 Comparative Systems

This final section seeks to locate the Children's Hearings system within a comparative context. Although the system has frequently been described as 'unique' in its approach to child welfare concerns and youth offending, there are certain commonalities it shares with legal systems in other countries (Norrie, 2022). The most similar system is that of the Bailiwick of Guernsey, a self-governing British Crown Dependency which chose to completely overhaul their existing child welfare system in 2010, introducing a non-court-based tribunal system called the Child Youth and Community Tribunal, modelled very closely on the Scottish Children's Hearings system.

Guernsey aside, most other child welfare legal systems typically involve courts to a greater degree. In England and Wales, a two-system approach is in place, with family courts hearing cases involving care and protection concerns, while specialist youth courts attend to most criminal cases involving children aged 10-17 (Masson *et al.*, 2017; Cunneen *et al.*, 2018). Northern Ireland operates in a similar way, although with an increasing focus on restorative justice alternatives in relation to youth offending (Marsh and Maruna, 2016; Bunting *et al.*, 2018).

There are also variations in legal systems across other western European countries, although there are some shared similarities with respect to the Hearings System's unitary nature. For example, Finland, Norway, Sweden and Denmark all rely on a single child welfare system for all children and young people under the age of 15 (or 14 in Denmark); beyond this the normal court system applies – there is no separate youth court system in these countries (Lappi-Seppälä, 2018).

Scotland's use of lay decision-makers in the Children's Hearings system is also less unusual than first apparent. In England, proceedings in family and youth courts can be overseen by lay magistrates as well as legally-trained judges. Magistrates sit as a panel of three when hearing cases involving care proceedings, and while they receive training for the role, no legal qualifications are required and the position is unpaid (Kollinsky *et al.*, 2012; Berrick *et al.*, 2019). Thus, there is a lay person component to this system even if embedded in a more formal court context.

There are also commonalities across comparative systems in northern Europe, particularly in Sweden, where initial decisions regarding placements involving out-of-home care for children are made by social welfare boards on which elected lay

representatives sit and make decisions on individual cases (Forkby *et al.*, 2016; Svensson and Höjer, 2016). While these individuals are elected on the basis of political party rather than the direct citizen participation route of panel members in Scotland, and the role is paid not voluntary, they are expected to act as lay representatives and there is no assumption or expectation of professional knowledge (Hill *et al.*, 2017). Decisions on individual cases involve between five and eight of these representatives (Svensson and Höjer, 2016). Out-of-home care can occur only if parental consent is present; if parents do not agree with social work recommendations the board will ask the district court to make that decision (Hojer, 2024).¹² The district courts in Sweden also have a lay component, with the decision-making panel consisting of one judge and three lay members (Bergman-Blix and Wettergren, 2018; Hultman *et al.*, 2020).

Norway also has a social welfare board system, but comprised of a panel of one lawyer who acts as the chair, an expert member and lay person (Skivenes and Søvig, 2016). The process involves the panel first holding a private meeting to prepare in advance of the court hearing, before the full hearing, known as a negotiation meeting, begins. Finland previously had a similar system of lay representative social welfare boards to Sweden, but in 2008, following criticism regarding the lack of knowledge and expertise amongst lay representatives, legislation was introduced which moved decision-making powers away from the boards. Instead, if parental consent is obtained, the decision to accommodate children away from home can be made directly by a head of social work. Without consent, courts become involved (De Godzinsky, 2012; Pösö and Huhtanen, 2016; Hultman *et al.*, 2020). In these family courts, decisions are made by two legally trained judges and an expert member with relevant expertise, such as a background in social work, psychology or similar (Pösö and Huhtanen, 2016).

Across these northern European countries there is therefore a range of commonalities and differences in how legal decision-making in child welfare and youth offending cases occurs. Firstly, most countries make use of lay decision-makers to some degree. Secondly, the Children's Hearings system appears to be unusual in that there is not the same expectation on decision-makers in other jurisdictions to make an immediate decision, within a particular time frame, in front of parents and children. For example, in

¹² There is acknowledgement that the notion of 'consent' in the Swedish system is open to critique, as has been noted in, for example, the use of s.25 voluntary orders in Scotland and similar s.20 orders in England (Anderson *et al.*, 2020; Hojer, 2024).

Norway, hearings tend to last several days, and end after the panel retire to confer privately to make a decision on whether or not to grant a care order (Skivenes and Søvig, 2016). The decision is not immediate, but is provided to the concerned parties within a few weeks, and is appealable in court.

Thirdly, there is variation in how often children and their parents are present in these different decision-making forums. In Sweden, children and parents are offered an opportunity to express their views to the board, but are not present through the entirety of the decision-making process, nor are the decisions made immediately following the discussion as is the case within the Children's Hearings system (Hojer, 2024). In Finland, while the importance of children's participation in care order proceedings is clearly enshrined in policy and legislation, in reality children under the age of 12 are rarely present in Finnish courts and the quality of participation amongst older children in practice has also been criticised (Pösö and Huhtanen, 2016). In England, children rarely participate directly in court proceedings; instead, their views are usually represented by lawyers and social workers (Berrick *et al.*, 2019). Parents are more typically present but again, are likely to have a lawyer representing their views than doing so themselves as is more typically the case in court settings. Overall, however, there has been little research, especially involving observations, carried out on how care proceedings are conducted across these different legal jurisdictions (see Berrick *et al.*, 2019 for a more comprehensive review).

2.8 Conclusion

This chapter has provided an introduction to the history and operation of the children's hearings system in Scotland. In particular, it has addressed the role and recruitment of panel members since the inception of the system, highlighting the issues of representativeness and a lack of clarity about the skills and attributes of a 'good' panel member. It has provided some context to the numbers of children and young people for whom hearings are arranged, who refers them, and the legal criteria for referral. The chapter provided an overview of the major legislative changes which have occurred since the system began operating over fifty years ago, drawing attention to the increased focus on legal representation as well as children's rights and participation, and the increasing complexity of legal processes and procedures, all the while the

essential functioning of three lay volunteers meeting with children, their parents and other participants has remained the same.

The chapter concluded with a discussion of the wider comparative context of child care legal proceedings in northern Europe, noting some of the similarities as well as differences in terms of lay decision-making and the varying desire for expertise, participation of children and families, and pressures regarding the speed of decision-making. This chapter is important in terms of setting the context for the review of the literature that follows next. In particular, while the next chapter includes a review of early as well as more recent literature, the older studies predate many of the legislative changes and therefore caution needs to be exercised in terms of drawing conclusions regarding current practice.

3 Literature Review

3.1 Introduction

This is a chapter in two parts. The first section provides a brief introduction to the wider context of research on the Children's Hearings system before identifying key themes within the literature that relate specifically to panel member decision-making. It draws on early as well as recent studies not only to provide historical background but to highlight that despite many of the changes in and around the system there are key issues that remain relevant today in relation to panel members and the decisions they make. It also shows the ways in which research attention has shifted over this fifty-year period, and highlights gaps in the literature.

The second part of this chapter introduces the reader to theories and concepts within the wider literature on judgement and decision-making. It is a body of knowledge which draws on theory and research across a vast number of different fields, and as a consequence a comprehensive review is beyond the scope of this thesis. Instead, the aim is to provide the reader with an overview and introduction to some of the key concepts and current thinking in this area identified as having particular relevance for the decision-making task for panel members.

The chapter concludes with a review of both literatures, identifying highlights key gaps in knowledge in relation to panel member decision-making and outlining the research questions for this study.

3.2 Panel Member Decision-Making in the Children's Hearings System

Academic interest in the Children's Hearings system over the last fifty years has varied, with an initial flurry of research activity then gradually declining over time leaving only a few key researchers continuing to explore aspects of the system outwith institutional output from SCRA. Early work was wide-ranging. Some texts were descriptive in nature, providing a general introduction and overview of the system (Kelly, 1996; Martin and Murray, 1976, 1982). Others reflected the original basis for the system's development, exploring how well it was responding to juvenile justice (Adler, 1985; Morris and McIsaac, 1978). There was criticism of the system's ability to balance

children's rights with a welfare orientation (Morris and McIsaac, 1978; May and Smith, 1980; Veitch, 1995), and praise for its increased ability (in comparison to courts at least) to facilitate the direct participation of children and young people (Fox, 1974). Some significant larger scale projects involving teams of researchers were undertaken, looking at a range of different aspects of the hearings system (Martin *et al.*, 1981; Hallett and Murray, 1998; Hallett and Hazel, 1998; Waterhouse *et al.*, 2000). The appointment and training of panel members was explored from theoretical and procedural perspectives (May and Smith, 1970; Haldane, 1971; Murray and Rowe, 1973), and empirically by drawing on written applications of prospective panel members (Smith and May, 1971) and interviews with appointed panel members (Mapstone, 1972; Smith, 1977). The relationship between panel members and social workers and how their respective roles were understood was also scrutinised (Smith, 1977; May and Smith, 1980).

The turn of the century saw an increased focus on how the Children's Hearings system responds to care and protection issues, reflecting the change in the balance of referrals away from offending behaviour (McGhee and Hunter, 2011; McGhee and Waterhouse, 2002; 2007), and to how children's views were expressed and heard in hearings (Griffiths and Kandel, 2000a; Creegan *et al.*, 2006). Referral patterns, initially of more interest from a youth offending perspective, were also scrutinised because of an overall increase in numbers in the late 1990s and concerns that the system has been at risk of being used as a way to access otherwise difficult to obtain services and support for children (McGhee and Waterhouse, 2002; Waterhouse and McGhee, 2002). Analysis also suggested that the system responded disproportionately to children from more deprived backgrounds (McAra, 2005; McGhee and Waterhouse, 2007). Some research continued to examine the hearings system from a youth justice perspective (e.g. Waterhouse *et al.*, 2004; McAra, 2005; McAra and McVie, 2005; McDiarmid, 2005).

More recently, a number of studies on the hearings system have been published internally by SCRA or by research partners in close conjunction with them. These have focused on a range of issues including the examination of reporter decision-making (Kurlus *et al.*, 2014), the role of safeguarders (Gadda *et al.*, 2015), and uses and outcomes in relation to different types of legal orders (Henderson and Hanson, 2012, 2015). There has also been a renewed focus on the overall operation of the system,

rooted in the impact of the COVID-19 pandemic (Porter, 2021; Dyer *et al.*, 2023; Nixon *et al.*, 2023) and the publication of two reviews recommending a redesign; the independent review of children's care in Scotland, known as *The Promise* (Independent Care Review, 2020), and the subsequent report outlining the details of this, entitled *Hearings for Children* (Hearings System Working Group, 2023).

There are two key points to highlight from this précis. Firstly, of this already limited body of literature produced over the last fifty years or so on the Children's Hearings system, an even smaller section of it has specifically addressed panel member decision-making, and for the most part, any discussion of panel members and their decision-making has tended to exist as a part of a larger overview of the system rather than it being the sole focus of any study. Secondly, very little of this body of work has involved direct observations of panel member decision-making and interactions in the hearings. Research directly drawing on detailed observations of decision-making in children's hearings has been limited to only a handful of studies, none of which have been carried out in the last twenty years (Smith & May, 1980; Martin *et al.*, 1981; Bruce and Spencer, 1976; Hallett and Murray, 1998; Griffiths and Kandel, 2000a). Nonetheless, despite these limitations, some recurring features raised in the literature regarding what impacts on panel member decision-making can be identified. These broadly relate to features involving the provision of information, people and relationships, interactions and participation, knowledge and understanding, and systems and procedures. It is to these themes that the next part of the chapter now turns.¹³

3.2.1 Reports

Written information is a key part of the decision-making process for panel members, and the use of reports and what elements of them shape decision-making have been a consistent feature in the literature. In 1981, Martin, Fox and Murray carried out one of the largest studies looking at the functioning of the Children's Hearings system. A total of 301 hearings were observed by a team of researchers between September 1978 and June 1979 across almost every local authority region in Scotland. The study also analysed records, including hearing reports, and used questionnaires to obtain the

¹³ Parts of this review of the literature have been revised from work previously submitted in partial fulfilment of the requirements for an MRes (Social Work) at the University of Edinburgh.

views of 921 panel members on the hearings and the cases they had dealt with. The authors reported that the sharing of information between social work and panel members was a key area of conflict which impacted on decision-making, and that social workers felt panel members did not value their assessments and recommendations.

At the same time, criticisms regarding the quality of social work reports provided to panel members have regularly been voiced. In 1972, a year after the hearings began operating, Smith and May (1980) carried out observations of 66 children's hearings in the North-East of Scotland with the stated intention of examining panel member decision-making. In this study, issues with the lack of social work recommendations in some hearings were noted. Meanwhile, Martin, Fox and Murray reported in their study that a significant proportion were 'fragmented, lacking in internal cohesion and theoretical structure' (1981, p.190). Hallett and Murray's (1998) study identified similar issues. In their analysis of 130 cases, observations of 60 hearings, and interviews with 98 hearing participants and 34 other key informants, they found social work reports were often absent, submitted late, or not updated, leaving panel members in some cases relying mainly on the discussion taking place in the hearing.

The landscape around written information has changed significantly in the last twenty years: strengthened by legislation, report provision is now more comprehensive.¹⁴ However, some issues have continued to be reported, such as the absence of a clear recommendation (Henderson and Hanson, 2012) and the variable quality of social work reports (Kurlus *et al.*, 2016). There has also been criticism of how consistently and rigorously children and young people's views have been recorded in social work reports. A study by Porter in 2017 involving the analysis of records of 160 children who had attended children's hearings found that of the 2,008 contact decisions made, the child's view was recorded clearly¹⁵ only 12 per cent of the time. Porter (2017) acknowledged the lack of specific requirement for views on contact to be recorded in reports, as children can also share their views verbally in the hearing (children attended 60% of the sampled hearings), and that many children may not have specific views they wish to share. Nonetheless, he concluded it was of significant concern that children and

¹⁴ Reports were not always provided to parents. It was only following a legal challenge (*McMichael v UK* (1995) 20 EHRR 205) that this became a legal duty.

¹⁵ 'Clearly' was defined as whether views on any increase, decrease or no change in contact was specified in the paperwork provided to panel members (Porter *et al.*, 2017)

young people's views in relation to contact were often so poorly recorded in written reports.

Alongside some of these issues with information provided by social workers was a preference for a separate professional perspective, particularly when conflicting views between parents and social workers were present. The impact of appointing a safeguarder on decision-making, something that panel members have been able to do since 1985, was explored by Gadda, Hill, Young and Welch in their 2015 study. This involved online questionnaire responses from 122 panel members, 62 safeguarders and 45 social workers as well as a selected, smaller number of individual or group interviews from across the cohort. Both panel members and safeguarders saw the additional assessment as an appropriate way to address particularly complex cases and potentially reduce the likelihood of a decision being appealed. Safeguarder reports were seen by panel members to provide an expert view of the situation, even when the panel members had no knowledge of the safeguarder's background and qualifications (Gadda *et al.*, 2015; Hill *et al.*, 2017), and to compensate for poor social work reports (Gadda *et al.*, 2015). These findings suggest that information provided by different professionals appears to be given different weight in the decision-making process.

3.2.2 People and Relationships

Another recurring feature in the literature on panel member decision-making has been that of interpersonal dynamics and interactions between panel members and different professionals in hearings. Much of the literature has concerned itself more specifically with reported tensions between panel members and social workers in particular. In another paper drawing on their observational data on decision-making, as well as over 50 interviews with panel members, social workers and other key professionals across 5 different local authority areas, May and Smith (1980) found poor working relationships between social workers and panel members existed. Social workers were found to resent being held accountable by what they perceived to be untrained lay people. Meanwhile, panel members were observed making quick judgements about the quality of social work practice based heavily on how the social workers interacted with panel members rather than on their wider professional performance and work.

Similar interpersonal tensions and power dynamics were echoed elsewhere, although findings did also include some positive views of social workers. Bruce and Spencer's study in 1976, involving observations of 51 hearings across four different parts of Scotland and questionnaire data provided by 120 panel members and interviews with a range of professionals, described newly qualified panel members exhibiting a wide range of attitudes towards social workers ranging from 'respect and awe to intolerance and scorn' (Bruce and Spencer, 1976, p.83). Some of these negative feelings appeared to be reciprocated, with social workers described as being reluctant to communicate openly with panel members in hearings, and observed giving the 'disappointingly frequent answer' of 'I have nothing to add to my report' when attempts to engage them in conversation were made (Bruce and Spencer (1976, p.84). Similar findings were reported by Martin, Fox and Murray (1981) and Hallett and Murray (1998). They also found that gaps in understanding of each other's roles, and some uncertainty amongst social workers about their roles and responsibilities within a hearing, contributed to these difficulties.

Mirroring some of the enduring issues with reports, tensions in these professional relationship dynamics continued to be reported some forty years on from some of these first studies. In the study by Gadda and colleagues, social workers described feeling that their reports were valued less than those provided by other professionals such as psychologists or safeguarders (Gadda *et al.*, 2015). Research by Kurlus, Henderson and Brechin (2016, p.48), involving interviews and focus groups with panel members and a range of other professionals, found panel members to be critical of social workers, believing they could be poor at implementing hearing decisions and lacked respect for panel members, directly echoing Bruce and Spencer's early findings. Additionally, the study found that social workers experienced panel members as being dismissive of them, not valuing their professional opinion sufficiently and failing to appreciate the 'emotional journey' they had been on with families. Of note is that other professionals involved in the study also shared this view that panel members appeared to lack trust in social workers. These varying levels of professional trust and contested perceptions of expertise affect decision-making because with decreased trust there is a greater likelihood of disagreement, and of alternative expertise from safeguarders or other professionals being sought, delaying decision-making (Hill *et al.*, 2017).

The examination of early as well as more recent literature on the Children's Hearings system has been important in showing the enduring nature of some issues in relation to panel member decision-making. However, some aspects of the decision-making process are a more recent phenomenon. As outlined in Chapter 2, a number of changes to the legislative context have occurred over the system's operation that, while not fundamentally changing the structure of the hearing and its lay decision-making, have impacted on the nature of the interaction and who attends. One key feature has been the changes in the rights and availability of legal representation for children and their parents. Children and parents have always had a right to appoint a solicitor for a hearing, but legal aid to do so only became available in 2001¹⁶, and even then, on a very restricted basis (Norrie, 2010). It was not until the *Children's Hearings (Scotland) Act 2011* permitted the provision of legal aid on a wider basis that an increase in the presence of solicitors in hearings began to occur (Porter *et al.*, 2016). Prior to this, with some exceptions, only those able to pay for it themselves or able to find a solicitor to act on a pro bono basis were able to have legal representation in a hearing (Norrie, 2022). At the time of Hallett and Murray's (1998) study, the presence of a solicitor in hearings was rare and their contributions were not a feature of any findings. Instead, reporters played a more prominent role in providing legal guidance and sharing their opinions in hearings. Now, reporters cannot get involved in decision-making while solicitor input has become much more prevalent (Porter *et al.*, 2016; Hill *et al.*, 2017; Norrie, 2022). The presence of solicitors has increased significantly, although mainly with respect to representation for parents and other relevant people, not children (Porter *et al.*, 2016). Legal representation has been welcomed from a rights-based perspective but there have also been criticisms that it can bring an increased adversarial approach to proceedings (Porter *et al.*, 2016, 2019; Hill *et al.*, 2017). A study by Porter, Welch and Mitchell in 2016, commissioned by the Scottish Legal Aid Board, used survey data and focus groups involving solicitors, panel members, reporters and social workers, as well as interviews with young people, to examine the benefits and challenges of legal representation in hearings. Participants recognised the benefits of solicitor representation in terms of rights and advocacy, but solicitors were also felt to make

¹⁶ The case of *S v Miller* 2001 SLT 531 established that failure to provide legal aid to ensure legal representation in a Children's Hearing was an infringement of Article 6 of the European Convention of Human Rights. This led to the introduction of the Children's Hearings (Legal Representation) Rules 2002.

panel members nervous and affect their confidence, particularly if their approach was adversarial. Although codes of practice for solicitors require that they have an 'understanding of the ethos of the Children's Hearings system' (Scottish Legal Aid Board, 2019, p.3), solicitors have been criticised for being 'aggressive and confrontational' in hearings (Porter *et al.*, 2016, p.40) and lacking an understanding of child development (Hill *et al.*, 2017). Little is known about the impact of legal representation on decision-making in hearings. Research has found that the presence of solicitors marginally impacted on decisions concerning birth family contact but that the effect was small and could also be argued to simply represent fair legal representation for parents (Porter *et al.*, 2016).

3.2.3 Participation and Interaction

The participation of children and parents in hearing discussions is viewed to be a central part of the decision-making process. Less is known about what this looks like in practice or how it impacts on decision-making, although attempts have been made to try and explore these interactional processes. Martin *et al* (1981) devised a method of coding levels of participation and style of presentation and engagement amongst children and their parents, and found participant contribution to the discussion had an impact on decisions. Increased participation of children and their parents, if engagement was positive, reduced the likelihood of compulsory legal measures being imposed. Similarly, interview data from Hallett and Murray's (1998) study reported a perception amongst participants that interactional factors could affect decision-making. These included a children's reporter sharing a view that aggressive behaviour from parents could intimidate panel members and affect their decision-making, and a social worker believing panel members could be swayed by a young person crying. These reports were anecdotal however, rather than being directly observed by researchers.

The ability of panel members to engage with children and their families was also indicated as a factor in decision-making in some of the early research. Panel members were observed to try hard to engage families, but with varying degrees of success, with participation levels amongst children and their families remaining unsatisfactory, according to Hallett and Murray (1998). Some striking differences in styles of engagement when interacting with participants were noted in early studies, such as the

panel members in Martin, Fox and Murray's (1981, p.134) study who were described variously as 'encouraging' and 'sympathetic' or 'contemptuous' and 'sarcastic'. Skilled approaches from panel members in facilitating engagement were found to correspond to lower rates of compulsory measures in both of these studies.

In Smith and May's (1980) study, genuine discussion in some cases was replaced by a more interrogative approach by some panel members akin to a question-and-answer session, leading to children and their parents seeking to provide what they thought would be an appropriate response, or simply remain quiet. Silence was viewed poorly and seen to increase the chances of compulsory measures (Smith and May, 1980). The authors were critical of panel members who asked leading questions, asked questions without allowing time for a young person to answer, or asked questions as a way of passing judgement on the young person's situation or behaviour rather than genuinely seeking information. Some panel members were also observed to ignore evidence which contradicted their thinking on a preferred disposal (Smith and May, 1980). Problems interacting with children and young people were seen to impact on decision-making by changing the shape of the discussion and information being shared. One situation was described in which the authors believed the pressure of questioning from the panel members had 'pushed' a young person into 'a kind of sullen hostility', where she had 'become aware of the panel members' basic hostility to her and decided that she had very little to gain from a more positive approach' (Smith and May, 1980, pp. 592-593).

In the last academic study to provide comment drawn from observational data on interactions between panel members, children and their families, Griffiths and Kandel (2000a, 2000b) also questioned how participatory these hearings were in reality. Drawing on ethnographic research involving the observation of 34 children's hearings and interviews with 40 panel members and 65 young people, they also noted a gulf between the desire of panel members to hear the child's views, and their ability to elicit this in reality. The panel members in this study were clear however, that the interactions were valuable in helping them understand the child's relationship with family members. This highlights the importance of face-to-face interaction as a source of information but also raises questions about the potential disadvantages of relying on this kind of 'snapshot' evidence.

No recent observational research exists on interactional aspects of the hearing. Instead, any sense of how the decision-making process is experienced by all parties must rely on reported data after the event. In a report produced by Kurlus, Henderson and Brechin in 2016 on behalf of the *Children's Hearings Improvement Partnership (CHIP)*, panel members were asked about how hearings could best be improved. They emphasised the importance of children's rights and participation in studies, felt strongly that children should be supported to attend their hearings, and believed that being able to speak to children directly aids their decision-making (Kurlus *et al.*, 2016). In contrast, social workers, safeguarders and legal representatives in this study felt it was less important for children to attend in person but rather all avenues should be creatively utilised to allow them to choose how they wish to participate and give their views. Gaps between the panel members' desire to see a child in person, and how other professionals may seek to protect a child from being exposed to a difficult hearing are often conceptualised as reflecting well-documented tensions between participation and protection (Tisdall, 2016; McCafferty, 2017; Mitchell *et al.*, 2023). What has been less recognised, however, is why the information gained from face-to-face interaction may be so important for decision-making, and it is worth noting that those who typically suggest panel members should be more willing to rely on the information provided by others in reports are those who have already had the benefit of the direct contact with the child or young person.

A final point about supporting participation and interaction concerns how well children and families understand the processes of hearings and how well panel members are able to support them with this. Research on decision-making involving parents with learning disabilities has highlighted how they may be disadvantaged in legal care proceedings because of the communication skills required to ensure their effective participation (McGhee and Hunter, 2011). In the study by McGhee and Hunter involving the Children's Hearings system, advocacy and legal representation was central to facilitating the participation of parents in the decision-making process, as was the ability of all concerned to be able to communicate with parents with learning disabilities. Other reports also indicate the existence of problems with how children and families understand the hearings process (Griffiths and Kandel, 2000a; CHS, 2016; Kurlus *et al.*, 2016). In the study by Kurlus and colleagues, issues were raised in interviews and focus groups by all participants including panel members that language

use when delivering decisions could be difficult for children and young people to understand (Kurlus *et al.*, 2016). Legal jargon was also seen to negatively affect children and young people's understanding of proceedings (Griffiths and Kandel, 2000a). Recommendations for improving hearings have included an emphasis on the need to keep discussions clear and easy to understand, however, gaps in the literature exist in identifying how this might look in practice (Kurlus *et al.*, 2016).

3.2.4 Difficult Conversations

In addition to issues where participation was hindered by problematic interactional approaches, early research also pointed to a desire amongst many panel members to avoid conflict in a hearing (Smith and May, 1980; Hallett and Murray, 1998). Where participants engaged with panel members openly and easily, and where discussions were harmonious and little or no disagreement was expected, feelings of relief amongst the panel members were described (Smith and May, 1980). Based on their observations, Smith and May (1980, p.595) argued that panel members sought to manage uncertainty by achieving consensus and avoiding disagreement, and that this could result in a preference for information that supported a proposed view, even if 'illusory'. A desire amongst panel members to seek agreement was also observed by Hallett and Murray (1998). They also noted that panel members could find it difficult to disagree with each other, particularly if that individual was perceived as more confident and experienced. Specific difficulties in talking about certain subjects were identified. Panel members were observed struggling to discuss sensitive and distressing issues, particularly if a child was present (Smith and May, 1980; Martin *et al.*, 1981; Hallett and Murray, 1998). Martin, Fox and Murray (1981, p.125-126) found that 'mention of sensitive areas in background reports acts if anything as a signal to avoid what could prove to be an emotionally disturbing subject of conversation'. Smith and May (1980) observed that panel members often sought to avoid a topic perceived likely to affect an otherwise positive discussion. In one hearing, they described panel members spending 'a good deal of time skirting around the central question [*regarding the referral issues around a young person and her parents' behaviours*] and dealing with marginal matters such as the exact arrangements for the girl to catch her school bus' because the panel members

did not know how to respond to the ‘father’s somewhat aggressive attitude and the tensions that were apparent between the girl’s parents’ (Smith and May, 1980, p.586). Smith and May (1980, p.586) were critical of what they perceived to be a deliberate avoidance of difficult topics as in their view it rendered hearings a performative exercise in which ‘much of the decision making that takes place in the actual hearings consists in socially constructing the reality of agreement from the parents and the child’ and led to a focus on compliance regarding manageable tasks rather than responding to more complex issues regarding family dynamics. In the hearing, attention was almost exclusively focused on the girl’s non-attendance at school while discussion of the parents’ relationship was studiously avoided even though afterwards the panel members were heard to remark that the parents not the child should have been referred to the reporter (Smith and May, 1980). While some authors have been critical of this perceived deliberate avoidance of difficult topics (Smith and May, 1980; Hiddleston, 1982), others were more sympathetic and drew attention to the skills required to do so, writing that ‘opening up very personal and sensitive matters with the family in the hearing is a sensitive task and it is scarcely surprising that panel members appear to have little confidence in their ability to conduct discussion of highly personal and at times deeply distressing experiences’ (Martin, Fox and Murray, 1981, p126). For Martin, Fox and Murray (1981), the challenges of managing an open and honest discussion in a hearing under such circumstances was formidable, and they expressed surprise that the panel members in their study remained convinced that such a hearing was achievable.

3.2.5 Knowledge, Understanding and Features of a Case

The challenges panel members face in discussing issues with children and their families in hearings are underpinned in part by the complexity of the problems and how these are understood. Inherent to the decision-making process is a range of assumptions and theories regarding the nature of the difficulties experienced by children and their families, and how these should be responded to. There has been little research carried out to examine this in relation to panel members, however, Asquith (1983) made an early attempt to address this gap. Using questionnaires and observations to compare decisions made in the Children’s Hearings system and English juvenile courts regarding

children who offend, he examined concepts of 'delinquency' (the key concern of hearings at that time) held by decision-makers in both systems. Asquith found that the 33 panel members he studied were more welfare-oriented than the 31 English lay magistrates, but that both groups tended towards individualistic rather than sociological explanations on the nature and theory of delinquency, and that this shaped decision-making in terms of how punitive their responses were. Similarly, Martin, Fox and Murray's (1981) survey responses from panel members indicated they held poor parenting and environmental deprivation to be key factors in explaining 'delinquency', with the former being seen more as an individual failure rather than something explained by wider social circumstances.

Asquith (1983, p. 213) argued that in order to understand panel member decision-making it was important to understand what sources of information they considered legitimate and what 'frames of relevance or operational philosophies' they employed. Similarly, Martin, Fox and Murray (1981, p. 45) noted that hearing outcomes were dependent on the 'whole life histories and a body of personal values and attitudes' of panel members but that it was difficult to investigate the impact of this on decision-making. Criticism of the lack of representativeness of panel members have persisted since the early days of the system (Mapstone, 1972; Moody, 1976; CHS, 2016), with this lack of representativeness seen to have implications for what value base panel members operated from and their ability to understand the difficulties faced by many families (Hallett and Murray, 1998).

There remains a lack of knowledge of how presenting issues are understood by panel members and what this might mean for the decisions they make. Martin and colleagues found previous appearances at hearings, problematic child behaviour at home, poor child mental health, single parent care and the existence of parental unemployment were factors which increased the chance of compulsory measures being implemented (Martin *et al.*, 1981). The risk of compulsory measures decreased if the child had a sport or hobby, if their school attendance was satisfactory and if they were achieving educationally (Martin *et al.*, 1981)¹⁷. Children and parents taking responsibility for their actions, and engaging with social workers increased the likelihood of positive outcomes

¹⁷ In this thesis, the singular 'they/their' is sometimes employed as a generic third-person pronoun in reference to the word 'child', or to maintain the confidentiality of a participant.

(Hallett and Murray, 1998). Panel members were also more likely to reject the recommendation of a social worker if a case was new and a child's circumstances less well-known to all parties (Martin *et al.*, 1981).

Earlier research found that panel members experienced care and protection issues as more straightforward to respond to than offence ones (Hallett and Murray, 1998), but now the opposite is held to be true, with care and protection cases seen to be much more challenging from a decision-making perspective than offence referrals (Hill *et al.*, 2017), particularly decision-making around permanency (Porter *et al.*, 2016) and birth family contact (Henderson *et al.*, 2012; Porter *et al.*, 2016). In the study by Porter and colleagues in 2016 looking at the role of solicitors in the children's hearings system, concerns relating to how panel members managed some of the demands of the decision-making process were identified. Some solicitors felt that panel members were often 'very confused about what they are meant to be doing' and struggled with the complexity of cases, particularly in relation to contact and permanency because they did not have the knowledge and experience to be able to make these decisions (Porter *et al.*, 2016, p.67). Scarcity of social work resources has also been highlighted in past literature as impacting on decision-making (Hallett and Murray, 1998).

3.2.6 Systems and Procedures

While the majority of features reported to impact on decision-making can be seen to involve more interactional aspects of the process, structural aspects of the hearings system have also been identified to play a part. Several studies have shown that panel members feel short of time and under pressure to make decisions and write these up (Hallett and Murray, 1998; Kurlus *et al.*, 2016). They argue that decision-making is much less hurried in other tribunal systems (Kurlus *et al.*, 2016).

Procedural elements of the system have also been noted to impact on decision-making. Errors made by panel members relating to legal matters, and mistakes in recognising the boundaries of decision-making, were highlighted in early research (Smith and May, 1980; Martin *et al.*, 1981). Examples included the occurrence of frequent procedural 'deficiencies' such as panel members failing to explain the purpose of a hearing or the right to appeal (Martin *et al.*, 1981, p.103) and panel members making mistakes such as

misunderstanding the task to provide advice to a sheriff (Smith and May, 1980). More recent studies have touched on the struggles of panel members to manage the legal complexity of proceedings, and that the presence of solicitors can make them more fearful of their decisions being appealed (Porter *et al.*, 2016). The use of legal terminology has been noted to detrimentally affect understanding and participation (Kurlus *et al.*, 2019; Independent Care Review, 2020; Hearings System Working Group, 2023).

Otherwise, there has been little exploration from a research perspective regarding the role reporters play in supporting panel members and providing prompts and legal guidance in hearings, how differences in understandings of the legal processes shape decision-making, or what impact this has on the ability of panel members to support children and families and ensure fair process. The reporter has a role in a hearing to support fair process and can express a view on any procedural matter, or provide advice on this if sought, but panel members are not obliged to accept any advice or guidance in relation to this (SCRA, 2019b).

The role of lay decision-making itself has also been called in to question. The ability of lay panels to provide robust scrutiny of social work decision-making has been a consistent concern. In the early days of the Children's Hearings, panel members were criticised for failing to provide adequate scrutiny and accountability against social work decision-making (Smith and May, 1980; Hallett and Murray, 1998). Research has noted the overall complexity of some of the cases and observed that panel members could be 'faced with particularly complicated and intractable problems' where they seemed 'to be at a genuine loss to know what course to take' (Smith and May, 1980, p. 585). The capacity of the system to address the complex needs of many of the children referred, and what level of professional expertise should be available continues to be a theme in the literature (McGhee and Waterhouse, 2007; Kurlus *et al.*, 2016; Porter *et al.*, 2016; Hill *et al.*, 2017). These concerns have led to recurring suggestions the hearing system be replaced by a specialist panel of chairs to sit alongside lay members (Kelly, 1996; Hallett and Murray, 1998; Naysmith, 2015). Most recently, in 2023, a proposal to professionalise the panel chair was presented to the Scottish Government as part of a wider series of recommendations aimed at improving the functioning of the Children's Hearings System (Hearings System Working Group, 2023). Although the idea was

subsequently rejected by the Scottish Government, primarily on the basis of cost, this proposal can be seen to reflect concerns about the ability of volunteer panel members to manage the decision-making process in hearings (Scottish Government, 2023a).

3.2.7 Agreement with Social Work Recommendations

Social work reports are a mandatory requirement in children's hearings, and there has been some exploration of the influence of the recommendations they contain on panel member decision-making. In a study by Morris and McIsaac (1978) which looked at a total of 1,593 cases involving youth offending between 1972 and 1973, panel member agreement with social work recommendations occurred in 88% of cases. Similarly, Martin, Fox and Murray (1981) found panel member agreement in 82% of cases where reports included social work recommendations, although they noted there was an absence of recommendations in nearly a fifth of the 301 hearings they investigated. Agreement with recommendations was noted to drop to 71% for first hearings (after the initial grounds hearing) and 66% to second or subsequent hearings, suggesting that panel members were more likely to trust the recommendations of social workers in the early stages when less was known about a child and family. Later research by Hallett and Murray (1998) found panel members agreed with social work recommendations in 84% of their 60 observed hearings. Smith and May (1980) did not publish data on agreement with recommendations but noted that panel member disagreement regarding final decisions was rare.

The landscape for these early decisions was very different in terms of, amongst other things, legal frameworks, the prevalence of offending rather than care and protection cases, and the wider social context and overall understanding of issues. Nonetheless, more recent research generally suggests similar levels of agreement. In a SCRA study published in 2012, a total of 1,686 Hearings for a cohort of 90 children on supervision requirements over a 5-year period were examined (Henderson and Hanson, 2012). High levels of agreement (94%) between panel member decision-making and social work recommendations were reported. However, 511 (30%) of the hearing reports were excluded from the sample due to an absence of clear recommendation or for the hearing to be continued for a safeguarder's report. Additionally, of the 278 hearings where specific recommendations regarding birth family contact were made, 30 decisions of

these went against social work recommendations, either regarding levels of contact or levels of supervision of contact. This represents a slightly lower overall agreement level of 89% regarding contact decision-making.

It is important to note that the sample of 90 children in Henderson and Hanson's study represents a small figure in relation to the total number of children on Compulsory Supervision Orders in any one year.¹⁸ Also, the longitudinal nature of the survey, following the same children over a long period of time, rather than looking at the decisions of 1,686 different children, may differentially affect decision-making. It may be that there is a tendency towards greater agreement in decision-making in the same case over time, meaning that levels of agreement between panel member decision-making and social work recommendations could be lower than the report suggests.

Additionally, when decisions regarding contact are examined, disagreement also tends to be higher. In a study by Porter (2017) exploring decision-making regarding contact, a lower level of agreement with social work recommendations was found. Of the 2,008 contact decisions examined made for 160 different children, 76% of decisions correlated exactly with social work recommendations on frequency of contact, and 63% with recommendations regarding the hours or duration of each contact. In nearly one in five cases, decisions made by panel members exceeded the social work recommendation in terms of frequency of contact, and in just over one in four cases decisions exceed the recommended number of hours of contact per week (Porter, 2017)¹⁹.

While the author concluded that this reflected a high level of agreement, stating that this indicated 'social workers and panel members have a largely shared understanding about the needs and best interests of the children and young people in relation to contact directions' (Porter, 2017, p.24), it is unlikely social workers would view these figures as positively, and it raises questions about what other factors influenced the decision-making in these cases. Porter also looked at whether the presence of other individuals at the hearing, and the views of children and young people, had an impact on decision-making. He found a slight positive correlation between decisions where levels

¹⁸ 6,789 children were subject to CSOs at 31 March 2023 (SCRA, 2024).

¹⁹ Frequency of contact was increased in 18% of cases, and decreased in 8% of cases, contrary to social work recommendations. Hours of contact were increased in 27% of cases, and decreased in 10% of cases, contrary to social work recommendations (Porter, 2017).

of contact were increased beyond the social work recommendation, and if a parent had legal representation (Porter, 2017). The views of children and young people were poorly recorded in social work reports with their wishes only recorded for 36% of decisions, although there is acknowledgement that panel members may have been able to obtain these from the child, or someone representing the child, in the hearing itself (Porter, 2017). In contrast, parents' wishes in respect of contact were more frequently represented in reports.

The study also highlighted discrepancies in reasoning between panel members and social workers for contact decisions. Based on the written reasons provided for decisions, Porter (2017) found that social workers were more likely to base their recommendations around concerns, such as the risk of emotional harm, while panel members were more likely to report contact was necessary to maintain a positive relationship, or that their decision reflected the child's views. Caution should be exercised in drawing conclusions on decision-making based on the written decisions alone, however, particularly given the limitations of time faced by panel members and how reflective these reasons are of the actual influences on decision-making.

3.2.8 Conclusion

This section has provided an overview of the research landscape on panel member decision-making, setting the scene for this study. In particular, the exploration of early as well as more recent literature has shown the persistent nature of some features of the decision-making process. These include: the provision and quality of reports; professional trust and interpersonal issues; the difficult topics and dynamics of some hearings; panel member understanding of issues and structural issues related to the system. Additionally, newer influences such as the increased presence of legal representation have been highlighted. What has been made clear from this review are the gaps in recent knowledge and methodology which exist in relation to panel member decision-making. Many of the research findings rely on data obtained in the early years of the hearings system in which the legislative, policy and social context was significantly different, and it has been over two decades since the last study took place drawing specifically on observational data (Griffiths and Kandel, 2000a, 2000b). Furthermore, there has been no engagement with any theoretical literature on

judgement and decision-making and what insights this may be able to provide. It is to this wider body of work that the next section now turns.

3.3 Judgement and Decision-Making

Despite the importance of the decisions that panel members make, there has been a striking lack of engagement with theoretical work on judgement and decision-making (JDM). One potential reason for this lack of engagement may lie in the sheer scale of academic contributions: the field of judgement and decision-making is vast and highly interdisciplinary in nature (Doherty, 2003; van Boven *et al.*, 2013; Keren and Wu, 2015). Judgement can typically be understood to involve the self-perceptions, assumptions, attitudes and opinions which define a person's *thinking* about themselves and the world around them, while decision-making relates to a person's *behaviours or actions* in that same world, although in general discourse and in much of the academic literature these two terms are frequently conflated, or at least show significant overlap (Connolly *et al.*, 2000; van Boven *et al.*, 2013). Research in the area of judgement and decision-making has been characterised by two main categories; *normative* (what people are recommended or modelled to do) and *descriptive* (actual human behaviour) approaches to decision-making (Keren and Wu, 2015). Within this large body of work, a number of key theoretical ideas exist which have relevance for the panel member decision-making task. This next section introduces these and considers the implications they may have for how decisions are reached in children's hearings.

3.3.1 Bounded Rationality and Satisficing

A central concern in theories of judgement and decision-making has been the issue of human rationality. Incorporating questions such as what is its nature, what counts as criteria and how much this matches with human behaviour, how rationality is defined and understood is critical to many of the debates within the literature (Doherty, 2003; Keren and Wu, 2015). Classical theories of decision-making have long tended to see decision-making as a more rational enterprise. Heavily influenced by statistical and economic theories, commonly underpinned by mathematical modelling in some way, there has been a heavy focus in some of the JDM research on identifying and promoting what optimal rationality under conditions of uncertainty would look like (Connolly *et*

al., 2000; Doherty, 2003). These formal, normative models have tended to focus on maximising expected utility, whereby utility (what is gained) refers to the predicted outcome of an event or result based on a weighing up of probabilities, with the underpinning assumption that an individual will make a choice that maximises this gain (Keren and Wu, 2015). In short, these models operate on a basis whereby the best decisions are going to be made by amassing and carefully weighing up all the available evidence and information.

Real life, however, imposes limits to rationality in the form of one's own cognitive capacity, the time available to make a decision, and the complexities of the problem and the environment (Simon, 1957; Doherty, 2003). This concept, introduced by the behavioural economist Herbert Simon, is known as *bounded rationality* (Simon, 1957). Simon famously argued that not only are there limits to rationality, but that as a result individuals seek to achieve satisfactory rather than optimal solutions the more these constraints are evident (Simon, 1957; Doherty, 2003). This model of *satisficing*, seeking out a good enough option, under conditions of limited time, information, complexity, resources and uncertainty can be seen as a rational and adaptive approach to take in real-life decision-making contexts (Taylor, 2012).

3.3.2 Models of Decision-Making

Different attempts have been made to theorise the bounded nature of decision-making. A well-established body of thought points to a dual model of thinking involving two distinct processes; one that is fast, intuitive and automatic and the other which is slow, controlled and deliberate (Tversky and Kahneman, 1974; Finucane *et al.*, 2000). Slow, deliberate, analytical reasoning is seen as being grounded in logical, linear processes. It is often prized above more intuitive approaches, but arguably fails to reflect the non-linear complexity of many real-life decision-making environments and types of information involving human relationships in which rapid assessment is required (Munro, 1999). The nature of the information environment in which decisions are being made shapes the way individuals use these different processes (Hammond, 1996). In situations involving complex information, where quick decisions are required, or where there may be higher levels of uncertainty, intuition tends to feature more prominently (Klein, 1998, 2015; Helm, 2022).

Dual-processing accounts of decision-making are not without their critics. The degree to which two separate systems or processes operate (Hammond, 1996) or exist (Kruglanski and Gigerenzer, 2011) has been questioned. Hammond (1996) disputed the notion of the separateness of these systems, instead conceptualising the two approaches as operating on a continuum or sliding scale where different combinations of intuition and analysis may result, some closer to the intuitive end, some towards the analytical end, with the positioning or emphasis of each of these types of processing dependent on the nature and properties of the task (Hammond, 1996; Dhami and Mumpower, 2018). Hammond termed this integration of approaches *quasirationality*. Other researchers have gone further, arguing that the distinction between the two systems is a false one and proposing a more unified approach (Kruglanski and Gigerenzer (2011). However, although thinking in this area continues to evolve, the view of cognition as a dual process model remains dominant, and it is this perspective which forms the basis for the range of ideas which will now be discussed.

3.3.3 Sensemaking under Conditions of Uncertainty

The choice between whether intuitive or analytical approaches are employed in cognitive tasks is largely understood to depend on the nature of the decision-making environment. It is generally accepted that under conditions of uncertainty there will be a greater reliance on intuitive rather than analytical forms of judgement. Intuition is considered to play a central role in judgement and decision-making in social work contexts (Helm, 2016; Cook, 2017, 2020; Cook and Gregory, 2020; Sicora *et al.*, 2021). Social work decision-making is a complex activity in which social workers first need to form an assessment by making sense of information which is frequently subjective, incomplete and contested. Uncertainty is an unavoidable aspect of child protection social work which cannot be eliminated, only managed (Munro, 2019). While social workers need to make many complex decisions in their work, there has been a particular interest in the psychosocial processes that are involved in gathering and interpreting information during assessment (Cook and Gregory, 2020). This has been conceptualised as sensemaking and is seen to be a part of the initial and ongoing process of judgement which precedes decision-making. Intuition is understood to be a central part of this process.

Research on intuitive judgement in social work has direct relevance for panel member decision-making. While panel members may have time in advance of a hearing to digest the contents of a report, many other aspects of the sense-making and decision-making task are often characterised by high levels of complexity and uncertainty. The decision-making is concluded in the hearing itself with the added dynamics, interactions and potential for new information that this discussion brings alongside the lack of opportunity for panel members to adjourn to deliberate on their decision. It is an interpretative process, and many of the decisions involve value judgements based on a range of individual, interpersonal and societal factors that cannot be reduced to a technical-rational model of decision-making (Helm and Roesch-Marsh, 2017; Cook and Gregory, 2020).

3.3.4 Intuition

Although the role of intuition in decision-making has been widely accepted, the exact nature of how this operates and how it should be understood has been more heavily contested. Drawing on the concepts of bounded rationality, satisficing and dual-processing systems of decision-making in their laboratory-based work, Tversky and Kahneman famously argued that individual judgement and decision-making can be influenced by mental shortcuts or rules of thumb – known as *heuristics* - and biases (Tversky and Kahneman, 1974). Within this heuristics and biases (HB) approach, intuition has been regarded as a source of bias and error.

A second key approach to understanding intuition is known as the fast and frugal heuristics (FFH) school of thought (Gigerenzer *et al.*, 1999). This approach shares the belief that decision-making relies on the use of heuristics, and that their use reduces cognitive burden and helps simplify decision-making in complex or uncertain situations (Gigerenzer *et al.*, 1999). However, where these two schools of thought differ is the extent to which heuristics are seen as problematic or helpful. The heuristics and biases approach has tended to view heuristics more negatively as a source of bias, while the fast and frugal school of thought prefers to see the reliance on these rules of thumb as a useful tool to assist in situations where quick decision-making under constrained conditions is required (Doherty, 2003).

A third approach to understanding intuition also draws on Simon's theory of bounded rationality and satisficing (Simon, 1957). Known as the naturalistic decision-making (NDM) model, it is based on research by Gary Klein and colleagues (Klein, 1998). This approach also acknowledges that individuals do not tend to adhere to the principles of utility theory – where individual choices are always fully rational - in real life decision-making. However, it departs from the HB and FFH schools of thought in arguing that heuristics do not represent the underlying mechanism of satisficing (making a satisfactory rather than optimal decision). Instead, the NDM tradition sees intuition as an 'expression of experience as people build up patterns that enable them to rapidly size up situations and make rapid decisions without having to compare options' (Klein, 2015, p.164).

Klein's well-known study of decision-making under extreme time pressure amongst experienced firefighters in the USA was used to demonstrate the centrality of recognition based on past patterns and experiences in determining a course of action (Klein *et al.*, 2010). In essence, Klein argued that his recognition-primed decision-making (RPD) model involved a blend of intuition and analysis in which past knowledge and experience was key, and that (and this is where there is agreement with Gigerenzer and colleagues) this intuitive approach to decision-making did not constitute problematic bias.

There are some important points to make in relation to these differences in the degree to which heuristics and biases are understood to exist and whether they should be deemed rational or otherwise. Firstly, some of the traditional judgement and decision-making research in which conclusions about decision-making biases and heuristics have been drawn has been criticised for being laboratory-based and involving experimental task situations focused on inference rather than action, and therefore not very reflective of the complexities of real life decision-making (Klein, 1998; Doherty, 2003; van Boven *et al.*, 2013). In these experimental situations, information is often already presented to research participants for them to use in their decision-making, which is not always the case in real life. There has also been criticism of the normative nature of how biases come to be defined as such and who decides what the 'correct' decision is (Doherty, 2003).

Secondly, in the debate about the generalisability of heuristics and the extent to which the use of these should be seen as prone to error or instead rational and effective responses to uncertainty and complexity, it can be argued that in some respects both camps are correct; that decision-making using heuristics can be rational and efficient in some circumstances but much less so in others, and that this is often dependent on the complexity of task and context (Hammond, 1996; Gigerenzer *et al.*, 1999; Gigerenzer, 2007; van Boven *et al.*, 2013).

Thirdly, consideration needs to be given to the nature of expertise in more complex, real life decision-making tasks. Naturalistic decision-making research has been more interested in real life situations and how experts might see a situation differently to a novice. For example, research on sensemaking in social work suggests that experience is central to skilled reasoning, and that as social workers become more experienced, they draw on greater levels of sophisticated intuition than novice social workers (Whittaker, 2018). This has sometimes been understood in social work literature as ‘practice wisdom’ (Sicora *et al.*, 2021).

3.3.5 Heuristics and Biases

If we accept that intuitive judgement can both aid and impede reasoning and decision-making then it is important to consider the conditions under which the quality of this judgement can be considered expertise and where bias or mistakes can occur (Kahneman and Klein, 2009). Klein’s naturalistic research suggests that intuition is important to decision-making, but that it is most likely to act as an advantage if the individual is able to draw on expert knowledge. Given that the Children’s Hearings system relies on a lay rather than expert model of decision-making, how expertise is defined and evaluated requires closer scrutiny. Yet, little is known about the processes of analysis and evaluation of information that panel members go through as part of the decision-making process.

Within the social work sensemaking literature, intuitive expertise is defined as arising when an individual ‘draws upon their repertoire of experience to recognise cues in a situation’ (Whittaker, 2018, p.4). Importantly, the quality of that judgement is said to depend on how predictable the environment is – described in the literature as a ‘high-validity’ environment - and whether that individual has had opportunities to learn from

previous similar experiences (Kahneman and Klein, 2009). Some of the particular challenges of panel member decision-making are that the 'repertoire of experience' amongst individuals is likely to vary significantly given its lay nature, that there is arguably limited opportunity for panel members to learn about the outcomes of their decisions, and that the overall decision-making environment is varied and not always unpredictable.

Well-known heuristics or rules of thumb documented in the JDM literature involving judgement under conditions of uncertainty include constructs such as representativeness, availability, and anchoring and adjustment. Representativeness involves making decisions based on categorisation which assumes the similarity of a person, object or event (van Boven *et al.*, 2013). In essence, mental shortcuts are used to make quick assessments based on previous experience while ignoring other salient information, which can lead to errors.

A second well-known example is the availability heuristic. This involves how easily, and in what quantity, an example is brought to mind (van Boven *et al.*, 2013). For example, an assessment of the effectiveness of a social work intervention may be over-estimated by how easily and saliently a previous positive experience of this is recalled.

A third example is the anchoring and adjustment heuristic. This involves a two-part process in which an automatic initial judgement is made then adjusted based on reasoning. Bias can occur depending on how the initial starting point is determined. If a first impression of an individual or event has occurred and it is poor, even if adjustment on the basis of further information takes place the baseline is already low and therefore any gains may be marginal (van Boven *et al.*, 2013; Keren and Wu, 2015). It is also not known to what extent biases can be reduced or subject to modification in the light of feedback.

It is important to note that mental shortcuts can be very helpful, allowing information to be processed and decisions to be taken quickly. When is intuitive judgement likely to be more problematic? If an environment is not predictable, or there is limited or no ability to learn from previous similar experiences, then unskilled or biased intuition can be understood to be more likely to occur. Typical examples include: overconfidence bias, which is when individuals show a tendency to be overoptimistic in their first reaction or response without considering, or having time to consider, what cued this; confirmation

bias, where individuals prefer to look for information which confirms what they believe rather than what might challenge their judgement; and hindsight bias, where individuals are likely to over-correct their previously stated predictions after an event (Kahneman and Klein, 2009; van Boven *et al.*, 2013).

Greater understanding of the use of these heuristics, and the occurrence of biases in panel member decision-making, is needed. All decision-making involves the filtering of information through previous individual experience, knowledge, values and beliefs, but for skilled intuition to occur, it also requires feedback on practice (Klein, 1999; Sicora, 2021). This raises questions about how panel members may interpret 'gut feelings'; what knowledge they are drawing on, what provision for reflective practice is in place, and what opportunities there are for panel members to learn from their decisions requires further exploration.

3.3.6 Emotion and Decision-Making

Another key, related area of interest in the field of judgement and decision-making has been the role of emotion. Despite the extensive nature of research on judgement and decision-making, thinking in this area was long dominated by a focus on cognitive and behavioural processes to the neglect of other factors such as emotion (Lerner *et al.*, 2015; Loewenstein and Lerner, 2003; Doherty, 2003). Over time this position has changed and the essential role of emotion in decision-making is generally understood, with emotions recognised as constituting 'potent, pervasive, predictable, sometimes harmful and sometimes beneficial drivers of decision making' (Lerner *et al.*, 2015, p.799).

To further consider the role of emotion in decision-making it is first necessary to explore the nature of emotion itself. How emotion is understood and conceptualised has been heavily debated and theorised, with these differences reflected in variations in terminology, with words such as affect, emotion and feelings often used interchangeably, adding to the already complex discussions and understanding of the topic (Gross, 2014; Lerner *et al.*, 2015; Moors *et al.*, 2013; Pritzker *et al.*, 2019). From a psychological perspective, affect can generally be understood as the umbrella term for any reference to someone's internal mental state (Barrett and Bliss-Moreau, 2009; Bornstein and Weiner, 2010). It is believed to be dimensional in nature and involves

levels of *valence* of an emotional experience (whether we experience pleasure or displeasure) and *arousal* (what levels of activation have occurred) either implicitly or explicitly communicated when people describe experiences of emotion (Barrett, 2006). Meanwhile, emotions can be understood as the bodily reactions that occur in relation to stimuli, while feelings are the brain's interpretation of these changes (Damasio, 1994). It is also important to note that affect as discussed in this research context can range from visceral emotion to a 'faint whisper' of feeling in either a positive or negative way, consciously or unconsciously experienced (Slovic *et al.*, 2005).

Research in neuroscience has set out arguments for a biological reality to emotion, focusing on the role of our central and peripheral nervous systems and how this connects to emotional expression and experience, and physiological arousal, reaction and action (Damasio, 1994; Panksepp, 2010; Dukes *et al.*, 2021). Debate remains however, as to the extent to which emotion is innate, or how much emotional responses are shaped by language and culture, particularly in the case of more complex emotional responses (Lerner *et al.*, 2015; Barratt, 2017). These differences are reflected in how emotion is modelled. This has included theories which argue for a core number of basic emotions from which all others are derived (Ekman, 1993), theories which argue for the centrality of appraisal in determining emotional experience (Moors *et al.*, 2013), and constructionist views which tend towards a dimensional model of emotions where emotions are mediated by socially and culturally shaped prior experience, and can therefore be understood as involving *constructions*, not reactions to the world (Barratt, 2006; 2017). For a fuller discussion on the contested nature of defining emotion, see Barrett and Westlin (2021).

While the degree to which culture and language shape emotional response is dependent on which theory of emotion one subscribes to, the evidence points strongly overall to emotion being central to human behaviour and interaction (Barrett, 2006; Lerner *et al.*, 2015; Duke *et al.*, 2021). Duke and colleagues argue that 'emotions do not just shape how we interpret the world, but also shape which aspects of the world need our attention and which can safely be ignored; emotions are not just about what is, but also about what matters' (Dukes *et al.*, 2021, p.816). Different types of emotion will also be involved. Studies in judgement and decision-making cover a wide range: from temporary reactions to much more stable, enduring phenomena; from an emphasis on

interpretation to a focus on physiological responses; whether emotions being described are those that are anticipated, or experienced; and whether experienced emotion is integral or incidental to a decision (Lerner *et al.*, 2015).

There has also been a wide range of studies investigating emotion and decision-making from different perspectives. Research in neuropsychology has shown that patients with impairments affecting the processing of emotions are left with a striking inability to engage in any level of real-life decision-making (Bechara *et al.*, 1994; Damasio, 1994). Meanwhile, in relation to the dual processing theories of decision-making mentioned earlier in this chapter, emotion is believed to act as a heuristic in more rapid, intuitive decision-making moments through the involvement of feelings linked to previous experience (Bechara *et al.*, 1994; Finucane *et al.*, 2000; Slovic *et al.*, 2005; George and Dane, 2016), and like other heuristics, these rules of thumb can also potentially lead to biases. Overall, it is widely believed that the experience of emotion impacts on thought, behaviour and the decisions people make, and that affective processes drive responses or actions even when these processes are not always consciously experienced (Barrett, 2006; Lerner *et al.*, 2015; Duke *et al.*, 2021).

3.3.7 Managing Emotion

Not only are emotions understood to play a role in what information is attended to and what decisions are made, they typically require to be regulated in organisational settings (Gross, 1998, 2014). This has implications for panel member decision-making as it occurs in contexts which, as the first section of this chapter has acknowledged, can involve difficult conversations and strong feelings amongst different participants.

The processes involved in managing emotion have been theorised sociologically as *emotional labour* (Hochschild, 1983) and in psychology as *emotional regulation* (Gross, 1998). Emotional labour was first conceptualised by sociologist Arlie Hochschild and is generally understood to refer to how individuals manage their own emotions in a work context (Hochschild, 1983). It draws on Goffman's (1959) dramaturgical model of self-presentation and interaction which states people engage in 'front stage' behaviour like actors on a stage when they know they are being watched, and that this behaviour is guided by social norms and expectations in that setting. According to Hochschild, there are ways in which society and social norms prescribe what emotions are appropriate to

display in the workplace, and how, and she termed these *feeling rules*. She further argued that employees rely on two techniques in emotional labour; *surface* acting, which involves masking one's own feelings and pretending how they feel in line with social expectations, and *deep* acting, where individuals focus instead on trying to change how they feel (Hochschild, 1983). In Hochschild's view both strategies involved effort and had an impact on emotional well-being.

Other authors, whilst acknowledging the usefulness of the concept of emotional labour, have challenged the idea of paid work as being conceptually different from emotion work in other scenarios (Grandey, 2000; Bolton, 2005; Grandey and Melloy, 2017). Grandey (2000) has argued for a need to integrate thinking on emotional labour with existing research on theories of emotion, seeing the key issue as being the level of *emotion regulation* required rather than any specific feature of the work role. The concept of emotion regulation refers to how an individual attempts to manage and respond to an emotional experience. This can involve recognising, interpreting and managing personal emotions as well as the emotions of others.

There are a number of core features of emotion regulation (Gross, 2014). One is that there is an aim or goal to modify the emotion. This can be intrinsic, where the goal is to regulate one's own emotions, or extrinsic, where the focus is on regulating the emotions of others (Gross, 2014). Another is the tools or strategies, implicit or explicit, deliberate or automatic, that can be employed to carry out the process of regulation (Gross, 2014). These include cognitive change, where you seek to reframe the meaning of a situation, and response modulation, which most commonly involves expressive suppression such as hiding external displays of behaviours associated with emotional responses, such as facial expressions or tears (Heilman *et al.*, 2010).

Less is known about the impact of emotion regulation on decision-making. Most studies examining emotion regulation tend to focus on the psychological and social well-being of the individuals involved, rather than the emotions of others (Webb *et al.*, 2012; Gross, 2014). Research in management studies has sought to explore the impact of *emotion-response* strategies such as validation or ignoring on outcomes in work contexts, although issues with conceptualising constructs and exploring these from a research perspective pose a challenge (Bradley *et al.*, 2024). Of particular interest from a Children's Hearings perspective is the differences in outcome when different strategies

are employed in responding to the emotions of others. Attempts to conceptualise this have focused on the extent to which the emotion is engaged with – whether there is high or low involvement with the emotion such as validating or reflective listening, or avoidance or a direct refusal to engage with the emotions - and in how oriented these approaches are to seeking a change in the emotion of the other person (Bradley *et al.*, 2024). There is some evidence in work-related contexts that strategies low in involvement with expressed emotion, such as avoidance of acknowledgement of emotion or avoidance of eye contact, negatively affect relationships (Lepore *et al.*, 2000), while strategies that are higher in engagement can decrease defensiveness during conflict discussions (Overall *et al.*, 2013). This research may not directly focus on decision-making but the role of emotion-response strategies in general has implications for how hearings are managed and how children and their families are supported to participate. This connects with research which suggests the quality of child welfare court hearings has a positive impact on parental engagement and overall outcomes for children (Summers *et al.*, 2017).

3.4 Conclusion

In this chapter I have presented the main body of literature on panel member decision-making in the Children's Hearings system and introduced some key concepts related to wider theories on judgement and decision-making. I have shown that over the last fifty years, there has been surprisingly little examination of how panel members make decisions. As a result, this chapter sought to provide a review of all relevant studies on the hearings system and the role of panel members since the system came into being in 1971. This was important not only in terms of offering a comprehensive review of the research landscape but also in highlighting the enduring nature of some features of the decision-making process. These included: communication and relational factors such as the ongoing challenges of how social workers outline concerns about children and young people in written reports and make recommendations; tensions between different actors in the system (especially social workers and panel members); factors involved in supporting or inhibiting participation and engagement; and the challenges panel members experience in having difficult conversations with children and families.

Closer examination of the studies which have looked at levels of panel member agreement with social work recommendations suggests a more critical perspective should be taken. The methodological approach adopted in the Henderson and Hanson (2012) study can be argued to result in an overly-optimistic view of agreement. There is also evidence that decision-making in relation to birth family contact is more contentious and more likely to lead to differences in outcomes between social work recommendations and final decisions. Finally, none of the studies adequately address what leads to *disagreement*.

Alongside these gaps in knowledge and understanding in relation to current panel member decision-making, two additional features stand out. Firstly, there has been a significant absence of observational research in the last twenty years offering insight into the interactions between individuals in the hearing room and the implications for decision-making. Secondly, there has been a complete absence of engagement with the wider literature on judgement and decision-making. In providing an introduction and overview to this body of work I have highlighted key concepts and thinking which are of relevance to understanding panel member decision-making.

Rationality is bounded, and leads to a need for satisficing, that is, seeking out a good enough option in decision-making. Decision-making is also understood to involve both analytical and intuitive processes, with intuition playing a key role when cognitive capacity is limited, time is constrained, information is complex, and outcomes are uncertain. These features are often present in children's hearings, suggesting that intuition is likely to play a role in decision-making. In such situations, individuals tend to rely on faster routes to making judgements involving heuristics or mental shortcuts. The extent to which these heuristics reflect pattern recognition drawing on expert knowledge, rational and effective responses to uncertainty and complexity, or alternatively a concerning source of error and bias, continues to be debated. However, it is generally accepted that decision-making, particularly in challenging conditions, is likely to involve their use. While research on sense-making in social work practice has sought to engage with these theoretical ideas there has been no similar exploration or engagement with these concepts in respect of panel member decision-making.

Finally, this review of key concepts and current thinking in the judgement and decision-making literature has highlighted the increased interest in the role of emotion. It is now

widely accepted that emotion is central to decision-making, although again, the exact mechanisms of this continue to be debated and developed. Linked to this is the role of emotion regulation, both of self and others. While there has been considerable focus in the literature on the self-regulation of emotion, there are gaps in understanding how responses to the emotion of others might shape interaction and influence decision-making. Given some of the tensions and challenges identified in the literature on panel member decision-making, research on emotion and related constructs may aid understanding of these processes.

These gaps in knowledge regarding panel member decision-making form the starting point for this study and I began my research guided by the following questions:

- How do panel members experience the decision-making process?
- How do panel members account for the decisions they make, particularly with regard to birth family contact?
- What do panel members find challenging about decision-making?
- What leads panel members to agree or disagree with social work or other professional recommendations?

The next chapter now presents the research methodology for this study, demonstrating how I sought to investigate these questions.

4 Methodology

The aim of this thesis was to explore how panel members make decisions in children's hearings. To achieve this, an ethnographic study was undertaken involving observations of 67 children's hearings and pre-hearing panels, and qualitative follow-up interviews with 20 panel members. This took place at a Children's Hearings centre in a Scottish city in 2019. Three different field sites were part of the original research plan but this was reduced to one due to the impact of the Covid-19 pandemic in 2020 which prevented further observational research being carried out within study timescales.

This chapter provides an account of how I designed and carried out the research. I begin by introducing ethnography as a research methodology and discussing why this form of enquiry was felt to be the most appropriate approach to answering my research questions. This includes an exploration of my position as a researcher and the importance of reflexivity in the research process. I follow this by outlining the research process in full. This includes identification of the research setting, access and ethical considerations, data sampling and collection, my approach to data analysis, and the modifications to the research design implemented following the Covid-19 pandemic. Finally, I conclude with some overall reflections on the project.

4.1 Ethnography

In choosing an appropriate research methodology to answer the research questions, a range of factors was taken into account. Practical considerations such as time, access and resources inevitably shape decisions, alongside bigger philosophical questions regarding the nature of knowledge and why this is important (Holden and Lynch, 2004). This section describes the chosen research methodology – ethnography - and explains why I felt it was the most appropriate approach to address my research questions.

Ethnography is a form of inquiry originally synonymous with the field of anthropology but long since embraced by a wide range of other disciplines. It is widely understood to include the following features: time in the field, an evolving research design, observation as a key (but not sole) method, interaction, and interviews with key informants (Wolcott, 1985; Hammersley and Atkinson, 2007; O'Reilly, 2012; Pink and

Morgan, 2013). It has a particular utility in how it draws on the power of observation, emphasises researcher reflexivity, and seeks to understand the perspective of participants (Emerson *et al.*, 2011). This offers an effective way of learning about 'a diverse range of complex social phenomena' in context (O'Reilly, 2012, p.1), and permitting a practice-near approach highlighting everyday realities and interactions. The value and importance of this type of research in relation to decision-making has been highlighted in settings such as social work where greater detail and understanding of practice realities is arguably obtained through the process of direct observation (White *et al.*, 2009; Cook, 2017).

Ethnography is not only about providing rich description. It also offers the ability to contrast in-situ communication with self-reported accounts provided by research participants through interviews or other methods (Hammersley and Atkinson, 2007; Froggett and Briggs, 2012; O'Reilly, 2012). In recent years, although the views of panel members have been represented in different research studies, this information has been drawn only from interviews or focus groups (e.g. Kurlus *et al.*, 2019; Porter *et al.*, 2019). Observational data can provide more naturalistic insights that illuminate what people do and how they interact, beyond simply what they say they do. This was recognised by Martin, Fox and Murray (1981) when they argued for the use of observational data in their children's hearings study, stating that their 'point of departure was the realization that neither formal descriptions of the system nor the statistical information derived from the reporters' returns could possibly provide an adequate account of the way in which the hearings system actually operated' (1981, p.43).

Despite Martin, Fox and Murray's enthusiasm for direct observations, only a handful of researchers have since embraced ethnography as a method for data collection in children's hearings (Hallett and Murray, 1998; Griffiths and Kandel, 2000a, 2000b). One aspect of this under-utilisation is likely to reflect valid ethical concerns involving consent and privacy for children and their families. However, there are also ethical questions to be asked about a reliance only on 'practice-distant' research methods which do not address interactional issues and practice realities in the same way (White *et al.*, 2009). Observational research methods make important contributions to knowledge in ways other qualitative methods are less able to, and can arguably be less

intrusive and more flexible than other methods such as interviews and focus groups (Carnevale *et al.*, 2008).

Another reason for utilising ethnographic methods is that it is particularly well-suited to exploratory research (Hammersley and Atkinson, 2007). Given the overall lack of research on panel member decision-making it was important to avoid making premature assumptions about the topic. Adopting another approach such as an in-depth case study design may have resulted in a more comprehensive view of decision-making in relation to individual children, however, this narrower focus on fewer cases would have risked excluding other important aspects of the decision-making process. I believe that the findings from this study support the argument for a broader, more inductive approach.

The sensitive and complex nature of this research topic also made ethnography an important choice. An ethnographic approach to data collection can help build trust, rapport and respect amongst participants as it offers a greater potential to overcome any possible barriers to engagement through time spent in the field building familiarity with participants (O'Reilly, 2009). This was important given the sensitive nature of the research topic, and my dual identity as a social worker and researcher, taking into consideration the reported tensions in working relationships between panel members and social workers (Kurlus *et al.*, 2019).

Finally, adopting an ethnographic approach can be seen to reflect a position on wider philosophical questions about what exists in the world and how we can acquire knowledge about it. It is essential to consider what we think our methods tell us, how we think about the problems we are studying and what the perceived legitimacy of our research is. For those schooled in more traditional natural science approaches to research, ethnographic research has been persistently criticised for being less objective and rational, despite evidence to the contrary (Hammersley and Atkinson, 2007). I hold the view that there is no singular reality to knowledge: it is subjective, constructed through interaction, and multiple in nature (Mol, 2002). If social interaction between individuals produces rather than reflects knowledge this also means that the researcher's role in the process is inescapably intersubjective and objective detachment as a researcher an impossibility (Fairclough, 2003; Hammersley and Atkinson, 2007). Two points lead on from this. Firstly, positionality and researcher reflexivity become

essential considerations, as will be discussed later in this chapter. Secondly, despite the impossibility of disentangling what the researcher sees and represents from the data generated, what is produced still has legitimacy as a knowledge claim (Fairclough, 2003; Hammersley and Atkinson, 2007), because there is an importance and value in the representations *resonating*, and being *recognisable* to others (Youdell, 2006).

4.1.1 Is this Ethnography?

Having defended the use of ethnography as a methodology I now turn to the question of what can or should be called ‘ethnography’. The expanded use of ethnography across different disciplines has led to criticism that some research designs fail to meet expected traditional standards particularly around focus, or the length of time spent in the field (Wolcott, 1990; Hammersley, 2018). This was a concern in this study. My plans for fieldwork were not only interrupted by the start of the pandemic but irreversibly changed by it, as I discuss later in this chapter. The reduction of time spent ‘in the field’ from three planned sites to one, with only six follow-up interviews as replacement, was disappointing. Additionally, the nature of the observations, with panel members attending only one or two hearings a month, offered little scope to build relationships and trust with participants as is typical in many ethnographic projects, and these factors made me question whether it was legitimate to say my study constituted ethnography. (O’Reilly, 2009).

However, other views of ethnography have been more flexible and encompassing, seeing shorter-term, albeit intense, pieces of work, sometimes across different field sites, as valid routes to knowledge production (Marcus, 1995; O’Reilly, 2009, 2012; Pink and Morgan, 2013). In particular, the concept of ‘patchwork’ ethnographic methods as a legitimate approach to ethnography has been argued for both methodologically and theoretically (Tsing, 2005; Fratini *et al.*, 2022). A patchwork approach to ethnography acknowledges the challenges ethnographers can face in relation to carrying out traditional face-to-face, long-term fieldwork. These might include issues concerning personal responsibilities, access, or, pertinent in my case, unforeseen disruptions such as the impact of the Covid-19 pandemic (Fratini *et al.*, 2022). Patchwork ethnographic methods embody a modern, feminist perspective to research in recognising the varied

personal commitments of researchers, and taking into account research realities that may not allow as easily for traditional approaches to ethnography (Günel *et al.*, 2020).

4.2 Reflexivity and Positionality

As I have highlighted above, reflexivity is an essential aspect of ethnographic research. It can be understood as a process of acknowledging one's background and positionality and considering how this affects sensemaking, without naïve assumptions that in doing so 'bias' will be eliminated (Hammersley and Atkinson, 2007; Eriksson *et al.*, 2012). A key challenge is being able to 'disentangle movements of the external world from the researcher's own shifting involvement with that same world, all the while recognizing that the two are not independent' (Burawoy, 2003, p.646). Included in this process of reflexivity is an element of convention which has developed in social science research to acknowledge aspects of the researcher's 'personal biographical perspective' (Seale, 1999, p.25). This can be seen as a form of transparency in research, allowing the reader to judge where the researcher has come from and what impact this has had on findings (Mauthner and Doucet, 2003). It also serves as a reminder that all knowledge claims are partial and should be made modestly (Lichterman, 2017).

In terms of my personal biography, I have worked in social work settings on and off since 1999, firstly as a residential child care worker and later as a statutory children and families practice team social worker in a local authority in Scotland. I began my PhD part-time whilst working in the practice team. With respect to the Children's Hearings system, I was familiar with writing reports and attending hearings as both a residential child care worker and social worker, so although not a panel member I had a level of 'insider' knowledge and status.

Given the close relationship between social work and the operation of the children's hearings system and for reasons of transparency I felt it was important to make my dual role as both social worker and researcher known (Mauthner and Doucet, 2003). I addressed this in two ways, conveying the information via e-mail to all panel members as part of an initial introduction to myself and my research, and acknowledging this in conversation when I met with panel members face-to-face. It is impossible to fully account for one's positionality and to know which aspects of this are more relevant to data collection or analysis. Nonetheless, some of the ways my identity as a social worker

appeared to impact on the research process and knowledge produced can be acknowledged (O'Reilly, 2009). This process of reflexivity was aided by regular academic supervision and the reflexive fieldnotes I kept during fieldwork.

My identity as a social worker as well as researcher was foregrounded in a number of ways in the process of data collection and analysis, as the following examples demonstrate. At times it appeared explicitly in interactions without any prompting on my behalf. This included a panel member, George, after commenting negatively to his colleagues about the capability of a particular social worker, appearing to remember that I too was a social worker and turning to me saying, 'I don't know how you do your job, [there's] no recognition when things go well'. At other times, I was the one who drew attention to my background by sharing my own social work experiences during conversations with panel members. Sometimes panel members asked what I thought about decisions they had made. This served both as a reminder of the level of scrutiny research participants can experience when being observed, and that my professional status may well have exacerbated any fear of judgement. At other times, comments during conversations suggested that my knowledge and experience as a social worker meant panel members saw me as someone who understood the challenges and complexity of their decision-making task.

These interactions are viewed to be a part of researching ethnographically, and if managed carefully can help build trust and facilitate conversation with participants (O'Reilly, 2009). Like social work, ethnographic research requires the use of self in a skilled way and constant reflection and reflexivity in how you manage your interactions. O'Reilly (2012, p.146) says that 'people react based on who they think you are', with access and interaction in ethnography being about who you are and who you represent to others. This was an important part of my wider learning of how to do research. As such, my thesis is a reflection of how I sought to develop both an awareness of taken-for-granted assumptions grounded in my practitioner experience, and how to use this knowledge and experience to explore meanings and understandings with my research participants. This also includes the ways in which my identity as a social worker became, for me, less of a feature I relied upon as my confidence as a researcher grew. I realised the value of the transferrable skills of sensemaking across both roles, and how

to make use of reactivity as a way of gathering and interrogating data, not just seeing this as 'bias' to be avoided (Hammersley and Atkinson, 2007).

The data collected in these observations, as with the interviews, depend on an infinite number of individual researcher choices, but it is hoped, to return to Youdell's point, that there is enough about the observed phenomena in the context of the hearings which resonates more widely and provides a strong foundation for the wider interpretations and knowledge claims that follow (Small and Calarco, 2022). How well I have managed the process of reflexivity using ethnographic methods in this thesis is ultimately for the reader to decide, but I hope the findings go some way to dispute the argument that research can (only) be done 'better' by seeking distance (Law, 2004; O'Reilly, 2012).

4.3 Research Design

Having considered some of the more theoretical concerns regarding research methodology, this next section takes a more practical turn by discussing the research design. This includes how the research setting was identified and modifications to the research design following the start of the Covid-19 pandemic.

4.3.1 Identifying the Research Setting

The research process for this study first began with the completion of a part-time research Masters which was a requirement of my ESRC PhD funding. This allowed time for my research proposal to take shape. During this period, preliminary work to identify the research setting began by meeting with representatives from SCRA and CHS to discuss the feasibility of a study and negotiate access.

SCRA organises hearings through their nine regional locality offices which have responsibility for hearings taking place across 32 local authorities (SCRA, 2023b). There are 33 permanently located hearing centres in Scotland (SCRA, 2023b). Urban hearing centres are open daily and have larger pools of panel members and more hearings taking place while smaller centres tend to only be open as needed. As an example of the contrast in numbers which can occur, 2,949 hearings took place in Glasgow City, Scotland's largest local authority, between 1 April 2022 and 31 March 2023 while only

210 hearings took place in Midlothian, one of Scotland's smaller councils, over this same time period (SCRA, 2024).

Discussions with SCRA and CHS involved clarifying options in terms of access to people, documents and places. Two hearing centres were identified as research sites and discussions took place regarding the possibilities for the third. Criteria for sampling choices have been collapsed to avoid site identification but were shaped by factors including stakeholder suggestions, geographical location, population characteristics of each of the centres, previous exposure to research (one centre was assessed to be suffering from research fatigue) and avoiding conflicts of interest (specifically, with my employment at that time as a social worker).

I sought a mix of urban hearing centres, with larger pools of panel members from different area support teams (ASTs), and smaller centres in less populous areas, on the basis there was potential for differences in features such as resource availability for children and families, levels of familiarity between panel members, or panel members' knowledge of children and families in the area. Two of the hearing centres provisionally selected were based in cities and covered more than one local authority social work area. The intention was to decide on a smaller site once data collection was underway. The plan was that using three sites would allow for any potential regional differences to be observed such as variations in social work practice and support, and panel member practice or SCRA processes, as well as helping achieve greater anonymity in reporting data.

Some restrictions were identified. The representative from CHS advised no organisational permission would be granted to observe panel members undergoing initial training to ensure the environment was a protected space for them to share thoughts and views. I was also advised by the representative from SCRA that no access would be permitted to children's case files and background reports because SCRA is required to manage sensitive personal information carefully under data protection legislation and only in certain circumstances can anonymised or aggregated data be provided. Ethical and logistical complications posed a barrier to accessing reports via any other route, and instead, observations of hearings were prioritised.

4.3.2 Hearing Centre A

Once research consent had provisionally been agreed at a national level the focus shifted to local negotiations. Hearing Centre A was chosen as the first field site. Located in a Scottish city, the choice of this hearing centre for the first stage of fieldwork was a deliberate step intended to help gain a more comprehensive picture of the research setting (Boyatzis, 1998). A good number of hearings involving more than one local authority and panel members from more than one AST occurred daily, maximising potential opportunities for observation, an important factor as I had no sense of how likely I was to obtain research consent for each individual hearing.

In October 2018 I approached one of the ASTs linked to the hearing centre. The Chief Executive of Children's Hearings Scotland had recommended approaching this AST as a starting point and had provided contact details. I met with the area convener, whose volunteer role within CHS involved leading the AST, and the learning and development coordinator to discuss my research proposal. We agreed an optimal time period for access, designed to avoid any conflict with newly-recruited panel members observing in their training period (January to March) and to give them time to settle in once they had completed their training and were sitting on panels.

In March 2019 I gave a short presentation at a joint panel member/social work learning and development session to introduce myself and my research, with the hope of encouraging panel members to participate in the study. I met with some panel members, local authority social workers and the SCRA locality manager for City A. Gaining access is a key issue in ethnographic research therefore it was essential the initial stages of the research process were managed optimally (Hammersley and Atkinson, 2007; O'Reilly, 2009). In May 2019 I also approached the area convener for a second AST based at Centre A but they declined to be involved in the study.

After negotiating a leave of absence from work, I moved to City A in August 2019. My observational period commenced 12 August 2019 and ended 4 October 2019, although I also returned to the city for a weekend in November 2019 to observe the initial stage of new panel member recruitment.

4.3.3 Disruption to Research Plan: Covid-19 Pandemic

My plan had been to undertake fieldwork in a further two hearing centres at different points in 2020, however, the start of the Covid-19 pandemic in March 2020 prevented these stages from being implemented. Pandemic restrictions had a significant impact on the day-to-day running of the Children's Hearings system and as all face-to-face hearings were stopped in order to comply with stay-at-home restrictions (UK Government, 2020), I made contingency plans to manage the impact to my research. The three potential options were to: observe virtual hearings, wait for the resumption of face-to-face hearings, or carry out post-pandemic interviews with panel members in Centre A.

The option of seeking consent to observe virtual hearings was both practically and ethically problematic. The set-up of a virtual hearing system, officially on 4 May 2020, encountered significant operational challenges including issues related to connectivity and participation (Nixon *et al.*, 2023). Issues with the video-conferencing software initially utilised by SCRA also restricted the number of users taking part in online hearings. These issues were not resolved until a change in software occurred around a year after the start of the pandemic. Given these difficulties and the overall challenges SCRA and the participants were facing I decided it would not be ethical to attempt to seek research consent to observe virtual hearings.

With respect to face-to-face hearings, although resumption slowly recommenced, essential participant attendance had to be prioritised due to the ongoing restrictions and the need to observe Scottish Government Public Health guidance on social distancing. Operational restrictions on face-to-face hearings continued to a significant degree until the end of March 2022. The ethical and practical implications of this meant there was no scope for further face-to-face observational fieldwork within the timeframe of my study.²⁰

My research plan was eventually modified to include follow-up interviews with panel members from Centre A, with the aim of exploring panel member decision-making from a pre- and post-covid perspective. Interviews with any panel member from the original

²⁰ *The Coronavirus (Scotland) Act 2020*, which introduced a number of emergency measures affecting operations, such as the legal requirement that children attend their hearings, did not lapse until 1 October 2022, well beyond the planned end period of my data collection.

area support team, qualified from 2019 or before, were sought. This aimed to ensure any panel member interviewed would have had experience of decision-making before as well as after the start of the pandemic, with a key focus on exploring how the changes which occurred as a result of the pandemic had impacted on panel member decision-making and how this compared to preliminary findings drawn from the interviews, discussions and observations which took place in 2019.

The impact of the pandemic on the findings from this study are discussed further in Section 9.3. This chapter now turns to discuss the approach to ethics and access for this project.

4.4 Ethics, Access and Consent

This section explores the ethical considerations involved in this research. The study required multiple levels of consent and consideration of ethical guidelines given the sensitive nature of the research area and number of organisations involved. Disruption caused by the Covid-19 pandemic also required part of these steps in the process to be repeated. At an institutional level both the original and Covid-19 amended research projects were approved in a tripartite ethical review process by the University of Edinburgh's School of Social and Political Science's Research Ethics Committee, the Scottish Children's Reporter Administration (SCRA), and Children's Hearings Scotland (CHS). Organisational consent was granted by SCRA to observe in the hearing centres, and from CHS with respect to approaching panel members to observe and interview them, as discussed in the previous section. Once initial approval had been granted in principle for the study, a multi-staged approach to individual research consent was then implemented. This is outlined in two parts; the preparation undertaken in advance, and how issues of ethics and consent were approached on the day of a hearing.

4.4.1 Advance Preparation

In July 2019 I met with the SCRA locality manager in Centre A to discuss the consent of children and their families. GDPR principles and the Data Protection Act (2018) states that consent needs to be freely given, informed, withdrawable and where the purpose of the research is clear. I sought to find a way to maximise ethical, informed consent while

minimising intrusion or potential distress. Directly approaching children and families prior to a hearing would not have been appropriate for reasons including the potential for this to cause distress, or risk them feeling pressured to agree. Instead, the following ethical approach was agreed with SCRA. Firstly, an information letter would be included in all panel arrangement forms sent out to young people and other relevant persons. This letter (see Appendix A) provided basic details of my research, the observation research timeframe (Aug to Oct 2019), and stated that they might be asked if I could observe panel members in their hearing but would have the right to decline. The letter included my contact details should any individual want to ask further questions. This gave every relevant person advance notice that I might ask to observe their hearing.

Next, I produced a poster (Appendix B) containing a photo of myself, information about my research and how I could be contacted. This poster was displayed on the glass panel at the reception desk when entering the hearing centre and in the waiting rooms during the period I undertook fieldwork. I also left business cards underneath the poster at the reception desk. I was never contacted by any young person or family member but two professionals who got in touch by email to ask more about my research used my contact details from the poster.

In July 2019 I made contact with the area convener for the area support team to advise my fieldwork would shortly be commencing and to discuss obtaining research consent from panel members. A reminder email outlining my research plan was distributed to all AST panel members and the local authority rota co-ordinator. The email also included a separate information sheet (Appendix C) and consent form (Appendix D) offering panel members the opportunity to discuss the study and provide their advance consent. Some panel members returned the consent form immediately and said they would be happy to take part in my research, but more commonly, consent was obtained on the day of each hearing.

4.4.2 Day of the Hearing

In order to observe a children's hearing, consent is legally required from the panel chair, child and any relevant person.²¹ Even if the panel chair consents, if the child or relevant person objects, for any reason, then permission to observe must be refused (Norrie, 2022). Panel members tended to arrive approximately 15-30 minutes before a panel commenced, meeting in the hearing room allocated for their session. On the first two days of fieldwork, my approach was to wait until all three panel members had arrived then to speak to them directly to seek permission to observe. However, I recognised this put panel members 'on the spot' potentially making it feel more difficult for them to decline, so thereafter, I either sought permission from one panel member and asked them to check with their colleagues once they arrived, leaving the room so they could have this conversation without me present, or I arranged for reception staff to check on my behalf while I waited elsewhere. No panel member declined to participate. Once verbal agreement had been given, I provided panel members with paper copies of the information sheet, and consent forms to complete if they had not already done this.

The process of seeking consent from children and any other relevant person on the day of the hearing occurred in two stages. Firstly, I would wait in the hearing room with the panel members while the Reporter spoke to the child and family members in the waiting room, explaining that I would like to observe their hearing but that they could decline if they wished. No one refused at this point. Once in the hearing room, permission was again sought from the child and other relevant persons by the panel chair, following the legal rules as noted above. Although I was already seated in the corner of the room, following the standard protocol for observers, I made a point of keeping my notebook closed until permission had been granted to try and demonstrate the avoidance of any presumption of consent. Some family members asked questions when consent was sought; one mother was given more information when she queried if I was observing in the same way as when a GP has a trainee shadowing, while a grandparent wanted to check if my findings would be anonymised. Someone else misunderstood my role, commenting that 'everyone has to learn somewhere', which was not corrected by the panel chair before commencing the hearing, and it would have

²¹ s.78(2)(b) and (c) of the *Children's Hearings (Scotland) Act, 2011*

been inappropriate for me to intervene given that interaction between observer and participants is completely prohibited during a hearing. No relevant person, however, refused permission for me to observe, or contacted me retrospectively to withdraw consent.

In the case of interviews, if panel members had provided consent to participate in my study and had provided contact details, I would e-mail them individually providing further information on the interview process and inviting them to take part. This is discussed further in Section 4.5.

It is recognised that the option to refuse consent can be compromised by power imbalances and raises questions about whether opting out feels like a genuine choice (Peled and Leichentritt, 2002). Negotiating informed consent in ethnography is particularly complicated, given the varying focus and involvement of different participants and the difficulties in knowing or anticipating who may be present (Hammersley and Atkinson, 2007). I have sought to describe the process of seeking research consent as transparently as possible to demonstrate the efforts made to do so meaningfully, alongside some of the challenges involved. It should be noted that while there has been limited observational research carried out on children's hearings, the presence of observers more generally in a hearing has not been unusual; typically, these have included students, newly recruited panel members, or panel practice advisors providing feedback to panel members.

Dealing with the practicalities of ethnography meant the question of ethics was a dynamic issue, where as a researcher I needed to prioritise making ongoing ethical judgements over and above a rule-based approach. Consent does not start and finish with verbal agreement but involves a constant and evolving process of negotiation (Peled and Leichentritt, 2002; O'Reilly, 2009). Throughout my research, I felt able to assess and respond to any ethical concerns by drawing on my skills, values and experience gained as a social work practitioner. Social workers adhere to a code of practice which includes promoting and respecting the rights of others, communicating and listening in a trustworthy manner, and trying to protect others from harm (SSSC, 2024). This ethical approach, focusing on relationships and an ethics of care, is also well-suited to the research task (Butler, 2002).

4.5 Research Methods

As discussed at the beginning of this chapter, ethnography involves using a range of different methods of data collection flexibly adapted to the research situation (O'Reilly, 2009). Participant observation is at its core, and observations of hearings were central to my study combined with the use of semi-structured interviews (Hammersley and Atkinson, 2007). Another key feature of ethnographic research is that the focus of the research develops over time, shaped by the experiences in the field. Adopting a more flexible, inductive approach permits the researcher to respond to the data and develop the research problem, recognising that it is during this process that the key areas of interest are often something other than the initial 'foreshadowed' problems (Hammersley and Atkinson, 2007, p.160). This was a particularly important aspect of this study given the lack of theorising of panel member decision-making and the overall exploratory nature of the project. I argue that without the flexibility of an ethnographic approach, some of the key findings in this study could have been obscured or remained hidden, as will be highlighted in my findings in chapters 5 to 8. Firstly though, this section outlines how I gained 'field' access, undertook observations and carried out interviews.

4.5.1 Observations

I undertook observations of hearings throughout the period of my fieldwork. In the first few weeks of fieldwork in Centre A, I was supported by the SCRA locality manager to identify possible hearings to observe. She would look at the hearing schedule and make recommendations which took my initial interest in birth family contact into account, as well as other hearings that were potentially more likely to involve contested decision-making. I was asked to avoid hearings if, for example, other observers were already scheduled to attend, but otherwise there were few restrictions. I attended the hearing centre between four and five days a week with the aim of observing as many hearings as I could and familiarising myself with the research setting. As fieldwork progressed and my presence became more familiar, the administrative staff I saw daily at the centre took over in providing support and guidance in relation to sessions taking place and whether there were any other observers scheduled. In the end, sampling of hearing sessions became shaped mainly by practical factors such as the scheduled presence of

other observers or, as fieldwork progressed, working around one-to-one interviews I had arranged.

Hearings were separated into morning and afternoon sessions commencing at either 9.30am or 1.30pm. Up to three children's hearings could be scheduled per session alongside the occasional pre-hearing panel if needed (PHPs tended to be short with only 15 minutes usually allocated for these). Panel members were expected to participate in around two sessions a month. I observed both morning and afternoon sessions on different days of the week across the duration of my fieldwork. There is nothing to indicate that if I had sampled across different times of the year this would have had any significant impact on the findings (Boyatzis, 1998).

There were three hearing rooms at Centre A. At the time of my fieldwork, one of these rooms was arranged in the 'traditional' format; a large table with three chairs behind it for the panel members, a small table and chair in the far corner of the room for the Reporter, and a number of chairs which would be rearranged by the panel members prior to each hearing depending on how many people would be attending. On occasion this could necessitate two rows of participants. This was the room most regularly used by the local authority area support team I had been given permission to observe. There was also a second, large room encompassing colourful soft seating arranged in a circular pattern, with no tables except one for the Reporter in the corner, a set-up which at the time of the study was being gradually rolled out in hearing centres across the country as part of a strategy to make the environment more child-friendly. I only observed one hearing in this room as it tended to be used for hearings for another local authority. A third, smaller hearing room was available but only used if the other rooms were busy.

In total I observed 56 Hearings and 11 Pre-Hearing Panels at Centre A. These involved 26 different sessions (14 morning and 11 afternoon). On three occasions I observed a full day – both morning and afternoon sessions.

Nineteen children were present in 30% (17) of the 56 hearings (18 in person, one virtually), 4 girls and 15 boys with an age range of 2 to 16 years (average age: 12; median age: 13).²² Fifty-one children were absent in 70% (39) of the 56 hearings, 17

²² Some hearings involved sibling groups

girls and 34 boys with an age range of 0 to 16 years (average age: 5; median age: 4).²³ This included 12 babies under the age of 1. No children attended any pre-hearing panels. These are typically very short meetings and it is unusual for any child or relevant person to attend.

As children's attendance at hearings has only been recorded by SCRA since April 2021 (following the introduction of a new data management system) there is no way of comparing the findings with this study with wider attendance figures at that time. However, recent figures suggest my sample is reflective of children's attendance currently: children's attendance figures between 1 April 2022 and 31 March 2023 stood at 33% for Scotland as a whole.²⁴ This sample also reflects Scottish figures from 2022/2023 which show attendance at hearings is higher amongst teenagers and lower amongst younger children and babies (Lamb, 2024). The table below summarises the different types of hearings observed and how this compares to national data across Scotland for 2019/2020 (SCRA, 2020):

Table 1: Observed Hearings at Centre A and Scotland 2019/2020 by reason

| Hearing Type | Study sample | Scotland |
|---|--------------|---------------|
| To review Compulsory Supervision Order | 48% (27) | 63% |
| To consider statement of grounds | 16% (9) | 27% |
| To consider interim orders | 21% (12) | 24% |
| To give permanency-adoption advice | 9% (5) | 2% |
| To give criminal advice/review CPO/consider remit | 5% (3) | 3% |
| Total Hearings | 56 | 30,363 |
| Total Pre-Hearing Panels | 11 | 3,873 |
| Overall Total | 67 | 34,236 |

²³ The ages of two boys were not recorded therefore they were excluded from the average and median age calculations. One was under the age of 5, the other in primary school.

²⁴ Data provides single figure for attendance if children attended in part, in full, in person or virtually.

Despite the small sample size of this study (0.2% of all hearings which took place in 2019/2020) the proportions of types of cases are broadly similar. Reviews of Compulsory Supervision Orders were the most common, followed by grounds hearings and interim orders. The hearing types that involved giving criminal advice, reviewing a Child Protection Order (CPO) and considering a remit were small in number and have been collapsed to maintain anonymity.

Observations involved a total of 59 different panel members, 22 male and 37 female. Sixteen of these panel members were observed twice, one panel member three times. This represented 47% of the total number of eligible panel members registered with AST A at the time of my fieldwork. In total in 2019 there were 126 serving panel members (45 male and 81 female, age range 19 to 77 years old, median age 54). I observed 49% of the eligible male panel members and 46% of the eligible female panel members. The length of service of the panel members ranged from 0-24 years (median 2 years, with 15 (12%) with 10 or more years' service). I had no prior information about which panel members would be sitting on any hearing; sampling was dependent only on the hearing schedule as discussed above.

The number of attendees - all individuals present excluding the three panel members, the reporter, and me as the observer - at a hearing ranged from 1 to 9 (average no. of attendees: 5.6; median: 6). There is no national data available on the number of attendees.

Demographic data was not collected from research participants. The ethnographic nature of this study meant that there was no way to seek advance consent in terms of observations. Asking for this information at the same time as permission to observe was being sought could have been perceived as intrusive. Retrospective follow-ups with panel members could have been attempted but would have required a clear consideration as to what this data, if shared, would have offered from a research perspective beyond confirming representativeness against local and national figures. While concerns regarding the representativeness of panel members, their understanding of the issues and social context of many children and families, and subsequent impact on decision-making have been raised, as highlighted in Chapter 3, the overall design of this study (with its focus on ethnographic observations and semi-

structured interviews) would not have permitted straightforward analysis of potential differences between different demographic groups.

4.5.2 Recording Ethnographic Data

There were two main aspects to the observational data collected for this study; the hearings themselves, in which I remained silent and took no part in proceedings, and before and after hearings, in which I was able to interact informally with panel members. These discussions differed from the more structured, one-to-one interviews in that they were more naturally occurring, with the potential for the topics of conversation to be led or initiated by the participants, not just the researcher revealing items of interest regarding group dynamics (O'Reilly, 2009). I took notes on these informal discussions which occurred between hearings, both when panel members were talking to each other and also when I was involved in the conversations.

Writing field notes is a central part of ethnographic research, but how this occurs depends on the nature of the research setting (Hammersley and Atkinson, 2007; Emerson *et al.*, 2011). Handwritten note-taking in hearings for the purpose of the research was approved by SCRA, with the stipulation that I would make these available to children's reporters at any point if they wished to check GDPR principles were being maintained.²⁵ Note-taking amongst observers in hearings is not unusual; it is standard practice for panel practice advisors to take notes when observing and providing feedback to individual panel members. Nonetheless, every attempt was made to take notes as inconspicuously as possible when observing hearings. The layout of the room I most commonly observed in allowed me to sit to the side of attendees, out of their direct line of vision but facing the panel members. In the one hearing that I attended in the second hearing room with the circular seated layout, I sat next to the child's social worker and felt my presence was more noticeable to everyone in the room. I felt less able to write freely as a result.

In the hearings I adopted an approach that involved near constant writing except in particularly sensitive situations, where I paused if I assessed there was a risk this could upset participants (Walford, 2009; Emerson *et al.*, 2011). In such cases notes were

²⁵ No checks of fieldnotes were requested.

written retrospectively as close to the observation as possible to minimise loss of detail (O'Reilly, 2009; Hammersley and Atkinson, 2007). I took the view that writing constantly avoided drawing attention when I started or stopped writing, or giving any indication to participants when observations appeared more interesting or salient to me.

When observing hearings, I focused on a range of different content and interactions. What is captured is partial in any observation (Haraway, 1988), but the decisions regarding what was viewed as important to record were shaped by a number of factors. At first, my note-taking was more generalised, and shaped by some of the challenges hinted at in the literature such as disagreement with recommendations or discussions regarding contact (O'Reilly, 2009). I considered aspects of space, layout, the presence or absence of the child, overall number of participants, and what was new to me as an observer (Stimson, 1986; Emerson *et al.*, 2011). I was aware that caution needed to be exercised in only noting 'significant' events (Emmison, 2004). I was able to capture fragments of dialogue in my notes which cannot be considered comprehensive but nonetheless helped capture certain aspects of interaction and practice. Over time, this gave way to a more directed, specific approach as issues of particular interest become more evident (O'Reilly, 2009). As well as the topics that panel members wanted to talk about, I became more focused on noting instances of language use, displays of emotion, body language, eye contact, and turn-taking amongst participants, how these were managed and appeared to aid or impede participation, and what this suggested in terms of engagement or emotion.

There are particular things to consider when attending to emotions in ethnographic research. It is dependent on our understandings of emotion and how much we believe that, for example, 'observed emotional expressions correspond to specific inner emotional states' or how much societal rules determine how we feel, express and interpret emotions (Flam and Kleres, 2015, p.8). Given that there is a performative element to emotion – emotions and emotional expressions are not the same thing – care needs to be taken with regard to any interpretation (Flam and Kleres, 2015). However, it is possible to observe and note emotional expression in others, and comment on how others react to this and what emotions *do* (Ahmed, 2004). It is argued there are three key components to emotion: motor expression (face, voice and gesture),

neurophysiological responses, and feeling (Flam and Kleres, 2015). While not all are accessible or visible, research suggests there are some fairly established markers which can be noted and interpreted, such as signs of emotional arousal via physiological changes in speaking rate, pitch and loudness. My field notes included observations of the emotions expressed and discussed by panel members and other participants, as well as notes on my own concurrent emotions when observing certain hearings.

4.5.3 Interviews

Alongside the observations of hearings and information conversations with panel members I also undertook individual, semi-structured interviews with a total of 27 participants (20 panel members and 7 other key informants) across two phases of data collection, the first stage in 2019 when I was able to carry out observational fieldwork in Hearing Centre A, and the second stage in 2021 when I carried out online interviews following the Covid-19 pandemic. Data collections during these two stages are described below.

Stage 1 interviews

In 2019, during the observational phase of my fieldwork, I carried out in-person interviews with fourteen panel members I had previously observed in hearings, as well as seven other key informants. I have not included specific details regarding these other informants to avoid identification from such a small sample but they included individuals in other voluntary or paid roles within the area support team, CHS, SCRA, or those with a legal/safeguarding role. These informants provided helpful local background, context and views regarding the various roles and operations of the hearings system, aiding my understanding of the research area (Richards, 1996; Arksey and Knight, 1999).

I first approached panel members for interview in week 3, using the first two weeks of fieldwork to prioritise observation of hearings and concentrate on acclimatising to the research setting. This also helped inform my interview questions. I thereafter interspersed observations of hearings with interviews with panel members. In total, I requested follow-up interviews with 17 panel members who had participated in 6

different hearing sessions I had observed. One of the panel members was observed twice and was asked about both panel sessions in the interview. Fifteen of the seventeen panel members responded, with 14 interviews taking place (one panel member had to cancel due to work commitments and we were unable to rearrange this before I left City A).

All interviews with panel members took place in the days after my observations of the hearings they participated in. Following an observed session which I had identified as relevant for further discussion (see below for criteria), I would email all three panel members asking if they would be willing to participate in a follow-up interview. I did not approach them immediately after the hearing for two reasons; firstly, to avoid any risk they might feel under pressure to participate, and secondly, in recognition of how tired panel members often were after a hearing session which could sometimes last 4 or 5 hours.

The location of the interviews was selected by each panel member to maximise comfort and convenience for them (Hammersley and Atkinson, 2007). I let panel members know that I could book a room at the local authority headquarters which most of them were familiar with due to various training events, or that I would be happy to travel to another location within the city that was convenient for them and would offer a space to speak privately. Seven interviews took place using a room within the main local authority building, kindly offered and arranged by the local authority support officer to the council. Four panel members asked if I could come to their workplaces in City A, while another four took place in a meeting room within the hearing centre itself.

Interviews were carried out between 3 and 25 days after the observed hearing sessions (average: 11 days, median: 8 days). While longer gaps between hearings and interviews impacted on some recall of specific events (sometimes panel members had sat on other hearing sessions in between, or had been on holiday in the intervening period), prompts using my notes from the session helped them recall most aspects.

Selection criteria for follow-up interviews was based on whether any of the following aspects of decision-making had featured in the hearing:

- whether there had been disagreement amongst panel members in their final decisions and the decision was therefore not unanimous

- whether panel members had disagreed with any aspect of the social work recommendation
- whether any particular aspect of the decision-making had involved a decision in relation to birth family contact, or was challenging in some way

The selected hearings do not represent the only times in which any of the above criteria were present, but instead involved a sample of these instances balanced with practical considerations in relation to time left in the field and my capacity to carry out interviews. Unintentionally, an even balance of 7 male and 7 female panel members were interviewed.

I developed a basic interview schedule (see Appendix E) which had a dual focus, asking panel members for their views and experiences from a general perspective, and more specifically regarding the hearings I had observed them make decisions in. These core themes were covered in every interview, alongside other questions relevant to the specific nature of the observed hearings. These included general questions about the participant's experiences of making decisions and what the challenges have been, as well as a specific focus on their reflections on decision-making in the hearings I observed them taking part in. My approach to interviewing involved trying to keep the questions open-ended to prioritise the panel member's narrative and their own use of categories, providing an opportunity for them to share their experiences in detail (Whittaker, 2009; Charmaz and Belgrave, 2012). I found that this approach worked better with some interviewees than others; some panel members were happy to talk, while others appeared more reticent, seeking reassurance at times that they had given me the 'right' answer. Interviews were recorded using a digital recorder.

The interplay between observation and informal discussion, and more formal individual follow-up, allowed for further exploration and interpretation of events (Hammersley and Atkinson, 2007). While recognising that interviews involve a process in which knowledge is being constructed and meaning-making taking place in the interaction between interviewer and participant (Hermanowicz, 2002; Gubrium and Holstein, 2003), they are still of interest in terms of what the interviewee sees as being legitimate to share about their experiences and concerns in that context (Charmaz and Belgrave, 2012).

Stage 2 interviews

In 2021, the amended Covid-19 research plan was implemented. Agreement was reached with a representative from Children's Hearings Scotland that their communications team would send out a mutually agreed email to all panel members in the local authority area, providing an outline of the Covid-19 amendments to my research proposal and encouraging them to contact me directly if they had any questions about their previous involvement in my research and were interested in participating in the second phase of the study, which would involve video or telephone interviews (see appendix F). This email was sent to panel members in September 2021, and again as a reminder in October and November 2021. In total six panel members participated in the follow-up interviews; three women and three men. Opportunities to participate were concluded at the end of November 2021.

Interviews took place virtually via Microsoft Teams. Four of the panel members had participated in interviews for the first stage of fieldwork. Another panel member had previously been observed by me but not interviewed in the initial fieldwork stage. One panel member was entirely new to the project. It was explained that the purpose of the research was to explore their experiences of decision-making pre- and post-pandemic (see Appendix G for interview schedule 2021). Recruitment of participants for this stage of the research was more difficult than anticipated. Some of the interviewees indicated that morale had been affected by the pandemic, and there may have been some fatigue or reluctance to carry out the interview using video-conferencing technology.

4.6 Analysis

A thematic approach to data analysis was undertaken for this study, consistent with an interactive and data-driven process typical for ethnographic research (Braun and Clarke, 2006, 2019; O'Reilly, 2012). Thematic analysis is one of the most commonly used methods for analysing qualitative data and is particularly useful for seeking to explore patterns in the data (Braun and Clarke, 2019). It is not a singular method of analysis but rather can be considered an umbrella term under which a range of different thematic approaches can be employed. Some of these prioritise coding reliability, a particularly structured approach which depends heavily on the development of early themes and places an emphasis on inter-coder reliability (Braun and Clarke, 2021),

however, while the approach employed in this thesis included the development of a thematic framework, as discussed below and presented in Appendix H, it has otherwise been more reflexive in its emphasis. Reflexive thematic analysis is methodologically more aligned to ethnographic approaches because it recognises the interpretative work required by the researcher and does not view this as a threat to the analytical process, something of particular importance given the exploratory nature of the study.

As is typical of ethnographic research, my analysis began at the start of fieldwork through the process of recording handwritten notes and memos of reflections during observations and after interviews. However, the desire to maximise data collection in the first period of fieldwork meant that while I began to identify and develop key themes during this time, more formal levels of analysis did not commence until after fieldwork had ended.²⁶ Due to my part-time status as a researcher and the impact of other work commitments there was a longer time frame between completing the first stage of my fieldwork and beginning transcription and analysis in full. Most of what I had read about ethnographic research and analysis emphasised the importance of immediate transcription while things were 'fresh' so I had been concerned about this gap between fieldwork and detailed analysis. In practice however, I found the distance helpful when thinking about the data (Emerson *et al.*, 2011).

I transcribed interviews myself for reasons of confidentiality and to familiarise myself with the data (Potter and Hepburn, 2012). I made memos throughout, developing and adding new ideas to preliminary themes already identified by the literature. For example, if a participant talked about 'contact', I would label this as such, while also adding notes about the thoughts and explanations they offered, and what I needed to consider or explore further in relation to the decision-making process. These notes included comments in relation to what panel members thought about the explanations offered by social workers and other participants, how clearly articulated or justified they felt the recommendations around practicalities were (such as duration, form, location, if supervision was required), and the short- versus long-term needs for the child in relation to contact.

²⁶ As the initial plan had been to carry out research in a further two hearing centres, I had initially assumed there would be further scope for ongoing comparison between the data and analysis between the different fieldsites, as well as opportunity for participants to comment on any preliminary analysis (Barron, 2013).

Each interview was transcribed in full. I used a simple form of transcription to allow for faster analysis of broader themes, returning later to specific sections of conversation that were of interest to ensure increased accuracy. Interruptions or non-verbal communication such as gesticulations or laughter occurred were noted, but not aspects of speech such as intonation or other emotional/vocal expression because my interest primarily concerned content rather than the interactional features of the interview itself.

Next, I typed up my handwritten notes of the observational data, following a similar process of writing memos and beginning some tentative initial coding, looking to see what resonated or differed from the interview data. For example, the extract below, from a discussion observed before a hearing one afternoon, contributed to the development of codes for *written communication, knowledge and experience, and resources*:

Judith goes out at 1.45 to let them know the panel are ready. When she returns there is further discussion about [Resource A]. Judith says she meant to look this up before she came out but didn't have time. Pete asks 'what's [Resource B]?'. Judith gives a brief intro about [Resource B] but I am not sure she knows a great deal about the service either. I ask if it is hard to keep up with all the different services and organisations that can be involved. Everyone nods. Theresa then says, 'I wasn't sure about [Resource C]'. No one responds. Judith looks up [Resource B] online and reads out a blurb, then starts looking up [Resource A]

(Contemporaneous fieldnotes, Hearing 39)

Transcribing all interviews and typing up fieldnotes in full alongside the development of a preliminary thematic framework was time-consuming, but helped with the process of thinking, reflection and getting an overview of the data in a way that was more immersive than just listening and reading (Thompson, 2014).

Once transcription had been completed, I saved each interview and fieldnote record as new documents without any of my original notes, and uploaded each one into NVivo. NVivo is a computer-assisted qualitative data analysis system which provides a way of managing large amounts of data as well as offering a range of tools to support analysis. Using this software, I began the cycle of coding the data methodically from the beginning. I employed a broad rather than fine-grained approach to classification within NVivo because I found it helpful to get more familiar with the data, going back and forth between the interview transcripts and observational fieldnotes, without committing to

narrower concepts or themes prematurely (Angrosino, 2007). I was guided by the thematic framework I had drafted, revising and updating this where needed as I worked through the data (Braun and Clark, 2006; 2019). My coding involved a combination of themes, some drawn more heavily from the literature and my research questions, such as '*contact*' and '*professional trust*', others representing emerging areas of interest such as '*emotion*' and '*non-verbal communication*'.

Once I had completed the cycle of coding for broader patterns and themes, I then began a further round of more finely-grained analysis within each of the thematic categories. For example, in instances where face-to-face communication had been coded, I began to develop these into more specific codes such as 'language use', 'participation', 'interaction' and 'snapshot'. These key themes, codes, and the description of these codes were brought together to become my thematic framework. Analysis included looking for patterns, consistencies, differences, areas of perceived significance for the panel members, or myself (Braun and Clark, 2019; Angrosino, 2007; Walford, 2009).

I also used Miro software to start visually mapping out ideas and relationships. Appendix I shows how this was completed in relation to 'child's views'. This was then developed to become the final empirical chapter in this thesis 'Hearing Children'. After these mapping exercises, I continued the analysis through critical writing rather than returning to NVivo. Initially, I found myself prioritising exploration of what panel members had shared or emphasised in interviews or in the observations, to try and maintain a focus on decision-making from their perspective. It was through this, for example, that the chapter on written communication developed. I then began to shift my attention towards my own observations in hearings. This led to the chapter on interaction.

4.7 Anonymity and Confidentiality

Data security measures were carried out in line with agreed research ethics applications, and all sensitive data was carefully managed and stored in a way which maintained participant confidentiality. Fieldnote transcriptions, interview recordings and transcriptions were password protected and stored electronically on secure University of Edinburgh cloud-based storage, and any identifiable details about

participants referred to in interviews with panel members were removed from transcriptions.

For the purposes of reporting findings anonymously, the following practices were employed. All participants were ascribed pseudonyms. As I was only able to carry out direct observations at one fieldsite rather than the planned three due to the impact of the pandemic, I was vigilant to the increased potential for anonymity issues. Anonymity is not just about removing names; the chance of sources being identified from quotes remains high because of, for example, the sample group's knowledge of particular individuals and how they speak (Byatzis, 1998). Some details regarding participants and their backgrounds were also altered where necessary to avoid identification. Quotes from interviews used in the thesis were edited to ensure readability such as removing 'ums' and 'you knows' and repeated words, and where necessary, to remove details that risked identification of the individuals involved (O'Reilly, 2009). Finally, any descriptions of aspects of a case or individual hearings used as evidence for an argument, have been done so carefully, thinking about the point being made and seeking to respect all participants in a hearing and ensuring no identifiable details were used. This has inevitably meant that some examples which would have provided supporting evidence for an argument have not been included in the thesis to respect the rights of hearing participants (O'Reilly, 2009).

4.8 Conclusion

This chapter has provided an outline and justification of ethnography as the selected methodology for this research study, the methods employed in data collection and how I analysed the data. In doing so, some of the practical and methodological challenges of carrying out research have been highlighted. The impact of the Covid-19 pandemic on my research plans was particularly disappointing but also a reminder that no study is without its challenges, and the lessons learnt in how to 'do research' have been invaluable. The strengths and limitations of this research will be reviewed and discussed in more detail in Chapter 9. The next four chapters will now present the findings from this study.

5 Informing

I know your research isn't about reports, but...

(George, observation)

This chapter discusses a central concern of panel members in this research study: the provision of information prior to a hearing, and how this affects understanding and decision-making. Primarily, it focuses on the nature of social background reports provided by social workers as there is a legal obligation for local authorities to provide these for a children's hearing. They are the primary source of information for panel members, but information from other sources, as outlined in Chapter 2, is also acknowledged (Norrie, 2022).

Written reports are the first introduction a panel member gets to a child and their family and the difficulties they may be facing. They were a frequent topic of conversation amongst panel members, who talked to both each other, and to me, about issues with written communication even when they perceived this to be incidental to the research focus of this study, as highlighted by the comment from George which opened this chapter. The picture that emerges is not only of the importance of written communication in providing the first introduction to the child, their family and circumstances, but that reports provided by social workers vary in how helpful they are to decision-making, and that frustrations with written information arguably also reflect the much wider challenges regarding decision-making under conditions of complexity and uncertainty.

There are four parts to this chapter. It begins with a discussion of the provision of information; when and how panel members receive this. Next, it turns to focus on issues related to content; what gets included or excluded, and why this matters for decision-making. The third section explores the presentation of information; issues of organisation and clarity, and the strategies panel members employ to manage the information they receive. The chapter ends with an examination of what it means to understand and make sense of the presented information. It looks at whether reporting is perceived to be balanced or not, the importance of multiple professional perspectives,

and seeks to demonstrate that some of the challenges of making sense of information go beyond some of the issues outlined in the previous three sections; that individual differences in expertise and experience affect panel member understanding and that the complex, contested and incomplete nature of information is often an inescapable feature of the overall challenge of the decision-making process.

5.1 Provision

This first section looks at what information is provided to panel members prior to a hearing, how this occurs, and how these factors shape how panel members make sense of the issues concerning a child. The volume of paperwork, how it was organised and distributed, the timing of papers being distributed, and issues with (a lack of) updated reports, all played a part in shaping how panel members were informed of concerns and how prepared they felt for the decision-making task.

5.1.1 Quantity and Organisation

The number of reports and other documents panel members receive can be extensive. At the time of the first stage of observational fieldwork in 2019, reports were provided in paper format and it was not unusual for large piles of papers to be seen on tables in front of panel members or on the floor next to them, serving as a very visual reminder of the sheer volume of the paperwork they were being asked to process. After one hearing for a teenage boy, I asked the panel members to talk me through the paperwork they had received. For this, the panel members had been given; a summary sheet (providing basic details of the child and the purpose of the hearing), a hearing arrangement form²⁷, the previous social work report, a pre-hearing panel request from the social worker regarding the attendance of a relevant person, and records of nine previous decisions and reasons from previous proceedings from the previous 15 months (totalling five hearings and four PHPS). This came to a total of 57 pages. Alongside this was an additional set of papers, 25 pages in total, which included another summary sheet, one additional record of proceedings, and the most recent social work report. In total, for

²⁷ The Hearing Arrangement Form includes information such as who has been notified of the hearing and whether information has been withheld and which legal provision authorises the non-disclosure (Panel Practice and Procedure Manual 2022)

this hearing, for one child, panel members had received 82 pages of documents. Nor was the hearing viewed to be one that involved complicated information or challenging decision-making; it was an annual review in which the supervision order was renewed, with no plan to change the existing situation in which the young person was to remain in his father's care, or any disagreement from the young person or his father with the recommendation. Therefore, not by panel members' standards a particularly complicated hearing or decision, or one that they felt merited 82 pages worth of papers.

Legal rules play a central and unavoidable part in determining the overall provision of these different documents²⁸. One panel member, Murray, questioned how helpful it was to receive every past decision and reason particularly for children who had been on supervision orders for longer periods of time, and suggested implementing a cut-off point, although others such as Mark found these useful in giving him an overview of concerns. More commonly, complaints centred around being able to navigate the paperwork, and how SCRA managed the process of collating a range of different documents. While an inventory of contents would typically be provided this did not always make navigation easy. Vicky talked about some papers being 'all held together with this treasury tag and sometimes they're stapled in batches in between', adding that she didn't always know what she was getting and that there was sometimes 'more than one copy of things'. Mark also talked about having to navigate disorganised paperwork:

One of the annoying things, and I don't know how they ever fix it, you get a front sheet, here's everything within this pack, so here's the front sheet, here's the previous hearing, decisions, the social work report, here's the grounds, but it's not numbered, so the papers aren't numbered, so it would be, that would just be, it's a small tiny thing but it's these little things where you think, right, I need to go to page 20 for example to see the previous grounds, so it doesn't, it just has a list of here's all the things in this bundle, so you do have to sometimes rake through all the stuff to try and find [information].

(Mark, interview)

Mark was careful to acknowledge these issues were not inevitable and that sometimes the organisation of paperwork was 'absolutely spot on'. Vicky also conceded there had

²⁸ As determined by Part 9, r.35 of the 2013 Rules, under s.137 of the *Children's Hearings (Scotland) 2011 Act*

been signs of improvement by SCRA on this issue, although Gordon was less positive, describing the system as 'atrocious'.

In 2019 when data collection for this study took place, all paperwork was collated and mailed to panel members by the local SCRA office, but there was already a plan in place to move to the electronic distribution and access of papers. The Covid-19 pandemic accelerated this change in procedure and by 2021 when follow-up interviews with panel members took places, there were signs that the online access had resolved some of these issues. However, the adjustment to electronic rather than paper copies of reports did not suit all panel members. While Ross said he found it easier to search for information when reports were in digital format, Lesley and Jennifer described finding it harder to reference or check information in social work reports when they were in a hearing.

Nor was it clear that there had been any change to the overall volume of documents. While Cheryl felt the volume of paper work had 'reduced dramatically' due to efforts made by SCRA to try and manage overall provision of information, Alex and George were less convinced. In their 2021 interviews, George said he'd recently received papers that totalled 102 pages, which included a social work report of around 50 pages in length, while Alex described having to work through 200 pages of different documents for a hearing. This suggested that the challenges for panel members of making sense of an array of different pieces of information, even if they were in some respects more easily accessed, remain.

5.1.2 Distribution

Sometimes rules regarding the provision of paperwork generated complaints of an opposing nature. Panel members felt there was frequently a lack of information provided for pre-hearing panels. Unlike other hearings, detailed social work reports are not typically submitted for PHPs²⁹, even though panel members must still make decisions on issues such as whether to deem someone a relevant person or not for a hearing. This led to panel members being asked to make decisions sometimes based on quite limited information. Even when written information for a PHP was praised by

²⁹ Confirm law, procedures, LA variations in practice

panel members (prior to one PHP, I observed Roy commenting that the social worker had provided a useful amount of detail on the reasons why the child should be excused), the panel members still had to seek clarification from the Reporter about factual information about the child and sibling's living arrangements.

A second issue concerned access to safeguarder reports. Gaps in information were reported when panel members were unable to access past reports. Dawn and Amanda commented that panel members only receive a safeguarder report provided for a previous hearing if the hearing is deferred or continued, unless specifically requested, but that social work reports can still make reference to safeguarder findings, leaving panel members curious about the information but unable to access it. These examples highlight how social workers may lack the full picture of the provision of information to panel members, and that this can on occasion act as a barrier to understanding.

Another issue raised by panel members involved the late provision of reports. Statutory timescales now exist which specify the minimum timeframe in which notification of a hearing and provision of the papers occurs: in general, these are 7 clear days in advance for hearing notifications, where practicable (exceptions would include emergency/short notice situations such as child protection orders) and 3 clear days (not including the day of the hearing itself) for the papers (Norrie, 2022). If these timescales are not met, then a hearing can consider deferring in the interests of fairness.³⁰ Despite these statutory guidelines, late reports were still a feature in 10 of the 56 hearings and one of the 11 pre-hearing panels observed during fieldwork. Four were a result of SCRA administrative errors, two were the social worker's responsibility, two were late submission foster carer profiles, and three were late reports from a school, safeguarder and foster carer. In some cases, reports had been made available at the beginning of the day; in others they were handed in just before the start of the hearing.

In each instance of the late reports, agreement was reached with the relevant persons (if present) to proceed with the hearings, and they were given time either in the waiting room or the hearing room to read the late reports. On one occasion, a foster carer profile was distributed to the panel members and relevant persons, including the child's mother, when they were already seated in the hearing room. The local authority was considering removing the child from their mother's care, and while the mother was

³⁰ It is recognised this may need to be balanced with a need to proceed in the best interests of the child.

aware of this recommendation, she had not seen the carer profile before. It appeared this was the first time she was being introduced to the potential carer of her child. In another hearing, family members were given only a short period of time in the hearing room to read a late school report. While this avoided delay, it could be argued to undermine participation, particularly when one considers the length of some social work reports or considers issues of literacy and the capacity of relevant persons to read and digest information in these potentially stressful meetings, as is discussed later in this chapter. Unequal power dynamics inherent in the system also raises questions about whether any of these children and their families feel they have a genuine capacity to disagree with the option of proceeding with a hearing.

Panel members also recounted other examples of issues with late reports. For Anthony, the task of dealing with a lengthy report, where he had to work through 200 pages of paperwork for a single hearing, was made worse when he and his colleagues were presented with yet more information on the day of the hearing by both the social worker and the child's parents. Similarly, George recalled a situation where a 60-page social work report was handed in late just before a hearing was about to commence. For panel members there was frustration about how the late reports impacted on their ability to be ready and prepared for decision-making in the hearings. Collectively, these issues of distribution, while much improved from the early days of the hearings system where it wasn't unusual for panel members to be handed reports just as they arrived at the hearing centre (Martin *et al.*, 1981), act as a barrier to the full information and transparency of dialogue required for a fair hearing (Griffiths and Kandel, 2009b).

A final issue connected to distribution of reports frequently mentioned by panel members was having to deal with out-of-date information because updated reports had not been requested or provided for procedural reasons. This occurs in certain contexts, such as when temporary legal orders are implemented. In the case of interim compulsory supervision orders (ICSOs), legally these must be reviewed at a hearing every 22 days, with a maximum of three ICSOs in succession permitted where a proof application is pending and grounds have not yet been established (Norrie, 2022). In such cases there is no statutory requirement for the local authority to submit an updated report for any of the interim hearings. Instead, verbal updates can be provided at the hearing. Additionally, the initial report for the child may well have been

submitted well in advance of the first hearing – as it is needed for the Reporter to frame grounds - because of the length of time it can take from initial referral to a hearing being arranged. One ICSO hearing for a baby highlighted this issue well, with the panel members expressing unhappiness that no updated report had been provided despite a succession of ICSOs, leaving the panel members preparing for a hearing reading information that was several months out-of-date, and reliant on the social worker providing a verbal update.

Panel members frequently described having to read reports that had not been fully updated, and they disliked having to wait for the verbal update from social workers. It reflected a keen desire to be as fully prepared as possible for the decision-making in a hearing. At the same time there was an understanding of why social workers might prefer this option – that it was easier and faster than updating a written report – and also that the fast-changing nature of some situations meant that the most recent updates couldn't be included in a report.

These incidents involving late reports also hinted at wider issues of trust in social work because in two out of the four examples noted above in which the late distribution was SCRA's error not the social worker's, the panel members had first assumed the social workers were to blame, with criticism of the social workers occurring between panel members in their pre-hearing discussions until SCRA's responsibility was acknowledged. These two instances cannot be considered reflective of every panel member's view of social workers. Nonetheless, if there is a tendency towards professional mistrust between panel members and social workers (Kurlus *et al.*, 2016), and panel members dislike relying on verbal updates, these factors could be argued to contribute to poorer first impressions of social workers.

5.1.3 Length of Social Work Reports

The final point to be made in this section concerns the much-discussed issue by panel members of the length of social work reports. Complaints were in evidence in both observational and interview data, with panel members such as Vicky remarking that 'you could spend hours and hours just going through the papers', and Ross sharing that he'd recently had to read a 100-page social work report while also recalling another situation where a 60-page social work report was handed in late just before a hearing

was about to commence. Helen and Joe raised similar complaints, describing the process of identifying what information was relevant in lengthy reports as being both challenging and time-consuming. These comments highlight that while legal rules of procedure play a central part in determining the overall provision of these different documents³¹, many of the challenges facing panel members related specifically to the length of the background report written by the child's allocated social worker. Given that panel members typically sit in three different hearings per session, with each session having the potential to also include sibling groups (and consequently reports for more than one child), making sense of large amounts of paperwork prior to a hearing was a time-consuming and familiar task.

Despite these challenges, some panel members did feel improvements were occurring, as noted here by Vicky:

The paperwork goes in phases, sometimes it's very good. I can remember when I first started being completely overwhelmed, by the number of, the child's plan [social work report] can run really quite thick, and it used to be the case that, people would update it and change a few things, and there'd be sheets and sheets and sheets of historic things, and a few changes, and it took you all your time to work out what was changed.

(Vicky, interview)

The impact of the Covid-19 pandemic was also observed to have helped make the provision of paperwork more manageable. In a follow-up interview with Lorna in 2021, she noted:

Some social work reports seem to be coming in more just as an updated letter, which is quite nice, rather than, you know, great long things.

(Lorna, interview)

Lorna felt that the increase in shorter reports had been a positive consequence of the pandemic but emphasised that this was still not the case for all hearings, and that lengthy reports could still be a feature. Cheryl was less convinced, stating that there could still be 'just masses' to read through. Excessively detailed reports were felt to

³¹ As determined by Part 9, r.35 of the 2013 Rules, under s.137 of the *Children's Hearings (Scotland) 2011 Act*

impact negatively on the decision-making process because more time and effort was required to identify what information was relevant to the recommendations. Too much information meant there was a risk important details were overlooked; Vicky said that excessive information ‘adds to the possibility of you missing something important’ and that even as an experienced panel member she still found herself in situations where another panel member would comment on a piece of information she has missed, no matter how careful she felt she had been in reading the information.

Panel members’ concerns about the volume of written communication also extended to what the experience might be like for children and their families reading the reports. Kenny commented, ‘you think we struggle with these large reports, then what do families make of it?’, while Theresa observed that it must be difficult for parents to read reports especially if they had any additional learning needs. Annie was even more critical, telling me she believed the hearings system privileged those with higher levels of education who are able to articulate themselves well and that the system was inherently unfair for children and families because they tend to be, in her opinion, ‘less articulate, and so it’s much more difficult for them to get their views across, and so they’re disadvantaged’. She felt ultimately this affected the ability of children and families to participate fully in hearings, and that this begins with the reports:

You’ve seen those reports, it takes a long time to read them. I can’t imagine that a lot of people can read that stuff. You know we make the assumptions when we go into those hearings, we always say to them, have you had enough time to read the reports, but a lot of people can’t even read, you know. And the ones who can read a little, they can’t read that stuff, and who’s got time to read that stuff, and you know the social work reports are not always that well written, so they haven’t necessarily been able to digest all the information that’s been given, that the panel will have digested, and it’s a difficult situation to try and express yourself, when you are maybe not particularly used to being in that environment and having to articulate how you feel about something like this, it’s very difficult.

(Annie, interview)

Annie’s comments speak to wider issues concerning inclusion and participation. If panel members often find reports lengthy and difficult to process, how do children and their families experience them? Parents with learning difficulties are over-represented in

care proceedings more generally, and in children's hearings specifically 'the complexity and length of reports combined with relatively short time scales may disadvantage parents with learning disabilities' (McGhee and Hunter, 2011, p.264). Findings from other studies have also criticised the accessibility and volume of information in social work reports for children and their families (Whitehead *et al.*, 2011; Kurlus *et al.*, 2016). Around one in four adults in Scotland have literacy difficulties with 3.6% of these experiencing serious challenges (St. Clair *et al.*, 2010). Given that adults having a greater chance of facing significant literacy issues if living in the most deprived areas of Scotland, and that most referrals to the hearings system also come from these areas, the likelihood that reports may pose a challenge for a number of young people and families to process is high, even without considering the emotional aspects to doing so (St. Clair *et al.*, 2010; SCRA, 2023a). If information in reports is less accessible this raises serious questions about an individual's ability to participate in a meaningful and fully-informed way in discussions in a hearing.

5.2 Content

We have seen how the volume, organisation, distribution and length of reports can negatively affect the decision-making process by increasing feelings of frustration, and creating potential barriers to participation and understanding. This section now turns to look more specifically at the content of reports. Social work reports are assessments involving the analysis of complex information drawn from relational practice and the creation of evidence-based plans and recommendations (Dyke, 2019). In the context of children's hearings they are arguably intended to convey to panel members who the child and family is, what their views are, what the concerns are and what the social worker thinks should happen. They serve as documents of persuasion, but how much do they persuade? Recurring themes regarding the relevance of information, the excess or absence of information, and differences between what panel members and social workers saw as 'evidence' were discussed. The findings point to gaps between what social workers want their reports to achieve and how panel members experience these, and that these barriers to communication have implications for decision-making.

5.2.1 Is the Past (Ir)relevant?

Panel members felt strongly that social work reports regularly contained too much historical information, particularly about parents, and that this frequently lacked relevance for the decision-making task. During one observation, Joe, referring to the 'huge amount of background' in a report for a hearing, told me he didn't need to know 'the detail of all of that previous history', he just needed to know the most recent issues and a short background summary. Conversing with her colleagues, Kathleen commented that the background reading was 'not something to dwell on', while Mark questioned why, if they were 'six years down the line' for a child and planning was at a very different stage was it still necessary to include 'all the historical stuff in as much depth'. Donald talked about this repeatedly throughout my interview with him. At various points he stated that it wasn't 'relevant' whether the 'parent wasn't parented well herself' because ultimately, he was 'dealing with the needs of the child, here and now', and that 'you've got to work through an awful lot of, stuff that it is just not really of use to you in a hearing'. He later added:

In some ways there's clearly, there's a social work style, and social work reports are used for different sorts of purposes, so you know, that's fair enough I mean, I don't expect sort of miracles, but you, I mean nowadays, I rarely read, anything about the history of the parents, because in a sense, I don't want to know that, it's not of help. You know, I'll want to know, where they are just now, I don't want to know that she was a drug addict when she was sixteen, she was thrown out by her mum, you know she's been through half a dozen different relationships, I don't want to know that, I'm not interested, I want to know where is she now? Because it may be that now, you know she's got her life together, and so on, and that's the bit that matters, you know. It may be that she's still a mess, but all I need to know is, she's a mess at the moment, you know, I don't need to know how she got there, I need to know how the child has got, where it's got to, but, eh, as I say, they're used for different purposes, and you obviously start reading them in different ways.

(Donald, interview)

The strength of panel member feeling regarding the focus on parental history may in part be a feature of a wider issue about the overall volume of information they are required to work through. However, this insistence amongst panel members that

accounts of a parent's past had little relevance for their decision-making also suggests a clear divergence between social workers and panel members in terms of the value of this information in social work assessments. Historical information might be viewed negatively by panel members, but evidence of past functioning is typically viewed as essential by social workers in helping predict future functioning (Reder and Duncan, 1999).

Children's social work assessments have frequently been criticised for not only being overly descriptive, but also lacking accompanying analysis (Brandon *et al.*, 2008; Turney *et al.*, 2011; Dyke, 2023). This suggests that part of the problem may lie in how well information provided by social workers is explicitly connected to the recommendations they make. In this light, Donald's view of the lack of relevance of the mother's past history of substance misuse or difficult familial relationships in her own child reflects a failure in the report writer to explain why these issues *do* connect to the 'here and now' in terms of, for example, her parenting capacity.

Reflection amongst panel members on why large amounts of background information might be present did occur. George said he felt the information was there to explain why a parent might behave in certain ways. He also recognised the pressures social workers were under and that they rarely had the time to edit reports. Donald was less magnanimous, sharing he felt information was sometimes just added because it was available, and that social workers believed 'the more information that's there, the better it is'. Kenny similarly felt social workers sometimes had a 'fear' of not including enough information, and when this happened repetition of information was more likely to occur. These comments show that in their reading of the evidence and assessment put before them, panel members make different assumptions regarding the circumstances in which the writer compiled the report, and that some of these may be less sympathetic towards the social worker than others.

Interviews with Ross and Eve in 2021 showed that they felt some improvements were being seen with regard to a decrease in the amount of family history being presented, and an increase in focus on the needs and views of the child. Cheryl and George, also interviewed at that time, were less convinced however, saying they were still reading reports which contained what they deemed to be irrelevant information.

5.2.2 'Missing' Information

Accompanying these challenges regarding excessive background information were complaints about what panel members deemed to be the absence of important or relevant information. In contrast to the amount of detail frequently provided in relation to parents and their histories, panel members often felt that the child wasn't foregrounded enough in reports. Helen felt the emphasis on background information in reports gave her a 'sense of the household, but not each child, and what that meant for each child, and, you know, what was really affecting them', and suggested reports could be improved by making the child's background and views, rather than the parents' background, more prominent, and that 'then you'd actually probably get to the decision much faster'. Given that the parent's background is also likely to be central to the child's experiences, this comment suggests that there may be issues in how these are being connected in reports for the reader. Nonetheless, Helen's comment draws attention to a long-standing concern about how children's views and circumstances are represented (or not) in reports (Holland, 2001) and reflects wider concerns about how to ensure children are 'heard' in hearings. This is explored in Chapter 8.

Linked to these difficulties of getting a sense of a child was a desire to see clearer future plans for children. Panel members said they didn't feel these were always present, or described in enough detail. Anthony's view was that instead of a lengthy section on past history, what he wanted to see was:

A very precise chronology of what's happened, and then give me the state of the nation and the go forward plan, and the child's plan.

(Anthony, interview)

Similarly, Richard felt that 'there's an awful lot to be said for good succinct histories and clear analysis of the present circumstance and options for the future'. Donald shared his views on what constituted a good report:

A good social work report deals with the here and now. Says, this is where we are, this is how we got here, this is where we think we should be going, and this is my recommendation. That's fine. That's what – and then it gives you, you know, right you say we're here now, and you can explore that to find out if, how everybody's sort of viewing the current situation, you can see how people are viewing the

options that are there, 'cos our job is not to decide whether social workers are doing the right stuff and so on, you know our jobs, it is about making a decision, it's not about trying to find a solution to somebody's problems, it is about sort of making it a decision, and there's, the information you need is, the critical stuff is, what's happening now, why it's happening, and what the possible impact of different sort of options might be, you know, I mean somebody to say, the child can't go home, because. Not the child can't go home because she wasn't able to look after her other three kids, I need to know why the child can't go home tomorrow, you know, it's these sort of things.

(Donald, interview)

These comments illustrate there is an overwhelming desire for information on the 'here and now', a phrase used by Donald twice in his interview with me and a sentiment repeatedly echoed by his colleagues. Instead, what panel members felt they got were reports weighted in the opposite manner, heavily emphasising past events, a persistent finding in other studies on the hearings system (Martin *et al.*, 1981; Kurlus *et al.*, 2016).

Tied into these 'gaps' in future focus were similar difficulties relating to social work recommendations. This is where social workers state in reports what decisions they believe to be in the child's best interests; this might be for the child to return home or be removed from the care of a parent, or to increase or decrease contact with a parent. Anthony was particularly critical of social workers who provided background information but no recommendations in either written or verbal form:

You get ones where it's just, well, what is it you're recommending, there's nothing there, and then you meet them in person, and go, so what's your recommendation, oh well, you know we feel we've done everything we can do. So, what you recommending? Yeah, well, and it's the politician's answer, just, I struggle with that, going, what do you want?

(Anthony, interview)

However, more generally panel members in this study indicated that a complete absence of recommendations was rare. Instead, information in support of recommendations was often felt to be absent or poorly linked. Helen and Vicky both felt strongly that information in reports could be more clearly connected to the specific

recommendations made by social workers, while Charlotte was observed addressing a social worker about this in a hearing, telling her that there was ‘no clear recommendation’ in the report, and that the child’s assessment was out-of-date, before asking for a verbal update. Telling the child’s story well and showing the journey of social work decision-making to the recommendations stage was identified as being a crucial, but sometimes absent, report-writing skill, and panel members shared stories of struggling to understand how background information related to and supported the recommendations in social work reports.

At the same time, these frustrations with current circumstances and recommendations, and Donald’s choice of words regarding their role as being to look at the ‘different sort of options’ and make a decision about a child’s future circumstances, not find a ‘solution’, also speak to much wider challenges regarding the highly complex problems being presented before panels. Partial knowledge (and this knowledge can only ever be partial) about a child’s circumstances can generate both a range of interpretations of the problem and no easy solutions, and result in strong feelings of helplessness amongst social workers (Fish and Hardy, 2015; Heggdalsvik *et al.*, 2022). As such, there is no reason to believe that some of these feelings would not be shared by panel members, and that it is these feelings that are being partly reflected in their criticisms of reports. In this light, comments from Kathleen, following a grounds hearing for a 14-year-old boy, in which she said, ‘there is a lot of history, but the plan, no’, in relation to the social work report, can also be seen to reflect the huge unknowns about this boy’s life, and the difficulties in finding, as Donald puts it, ‘a solution to somebody’s problems’.

5.2.3 Information or Evidence?

Alongside these frustrations with plans and recommendations there was also a recurring view expressed about what information is provided to support these. Helen and Vicky’s views on poorly evidenced recommendations, touched on above, were a recurring theme and speak to the differences between the provision of information and whether this can be said to constitute ‘evidence’ for a plan of action.

Sometimes the issue raised involved questions around the provision of evidence for a recommendation. After one hearing that had been arranged to provide permanence advice to court, where the recommendation was not being challenged by the parents

but changes were being advocated in relation to sibling contact, I asked the panel members their views about the extent to which sibling contact had been discussed in the social work report. Richard said ‘nothing’, while Cora said, ‘very little, no real mention’ of the oldest child.

At other times, the information was not felt to be consistent with the recommendation, as highlighted here by Mark:

The recommendation from social work, you’ll sometimes read it and think, either that doesn’t match what you’re kind of talking about, because I’ve seen somewhere they’re painting this fairly bleak picture of what’s going on at home, but then the recommendation is that the child remains at home under a supervision order, so you’re left thinking ok well, it’s not, really, that’s not what I’ve gotten from reading this, I’m thinking there’s a lot of chaos here, you know.

(Mark, interview)

On occasions where panel members made decisions that contradicted the social work recommendation, they often made reference to poor, contradictory or absent evidence in reports. For example, Joe reflected on a case where he felt the evidence presented in the report was at odds with the recommendation; the mother was making good progress therefore it wasn’t clear to him why social work wanted to reduce the contact. The panel ended up ‘going mildly against the recommendation in terms of contact’ because, according to Joe, there wasn’t a ‘really good legitimate reason to say, well the mother’s doing well, everybody’s doing well, and you want to reduce the contact?’

The absence of clear recommendations could also lead to protracted debate. In one hearing, panel members and other participants became involved in lengthy deliberations regarding the specifics of a contact plan for a 9-year-old girl. There was arguing between the parents, and many of the participants ended up talking over each other. During this, Judith was heard to comment, ‘we’re going to have to think about the wording [of the contact decision]’, and afterwards the panel members were critical of the social worker, feeling that some of the discussion in the hearing could have been avoided if the recommendations regarding contact in the report had been more clearly articulated. Joe and Judith’s comments not only highlight the desire amongst panel members to have the evidence for recommendations clearly spelled out, and the

potential consequences for decision-making if this isn't the case, but raises questions about how panel members make sense of information and what constitutes 'legitimate' evidence, which will be discussed in the final section of this chapter.

5.2.4 Purpose

A short but important final point in relation to the content of reports concerns the different purposes they serve. Some panel members also wanted information in social work reports that would help them prepare in advance how best to support all involved to participate, and how to manage any potential challenges or barriers to this. Richard said he found it 'very, very helpful' to get a sense of 'sometimes, conflicting, views, in advance of the hearing at which we will be taking decisions'. After one hearing, Christine remarked that the social work report had helpfully shared that the child's mother found it difficult to manage hearings, and how this manifested behaviourally; that if upset she would leave and re-enter the hearing room repeatedly. This meant that when this happened in the hearing, the panel members made no comment, and the strategy appeared effective in permitting the parent to go in and out of the hearing room, managing her participation and the regulation of her emotions on her own terms. This highlights the usefulness of preparing panel members in advance in all aspects relevant to the decision-making process, and serves as a reminder of the role panel members have in managing emotion in hearings. This is explored more fully in Chapter 7.

5.3 Presentation

Alongside accounts of how information was navigated ahead of a hearing, and what was desirable in terms of content, panel members also gave accounts that spoke to the importance of how information was presented in reports and how this affected decision-making. This section discusses how the writing skills of social workers were both complimented and criticised by panel members, the reasons for this, and what impact this had on making sense of information. It also looks at what strategies panel members employed to navigate documents; what information they looked at, or didn't, and how they talked about connecting the different pieces of information to form a sense of the child and family and the issues at play. These accounts suggest that where

more barriers to communication are present, navigation of the information becomes a more demanding cognitive task and important information is at increased risk of being missed.

5.3.1 Clarity and Organisation

The writing skills of social workers, and what panel members felt made writing competent and effective, or otherwise, was frequently discussed by panel members, sometimes in response to a direct question about what helped or hindered their ability to make decisions, at other times unprompted. The desire for clear prose was a powerful one, as demonstrated by Annie below:

In any discipline it's really important, you know the essence of things, if you can't communicate your ideas then you're, every now and then you come across one [a report] that's really brilliantly written and you think, oh yes, I can understand everything and all the points are clear, and it's just fantastic.

(Annie, interview)

Even Anthony, not someone to shy away from strong criticism of social work practice, offered praise, describing some social workers as excellent writers:

You know yourself from social work, some people are excellent at it, some people not so, so you get some things and it's, really clear chronology, really easy to read, got a very good summary of where we're at right now.

(Anthony, interview)

Panel members said well-written reports helped make decision-making more straightforward. After a particularly difficult hearing involving the cessation of birth family contact, Ross said there was something valuable in being able to read the detail of the issues in 'black and white' prior to the discussion in the hearing, and that 'it was having the two sources of information [*the reports and the discussion in the hearing*] that really affirmed what was going on'. Ross's account of how the detailed written description of the child's reaction to contact helped him reach a difficult decision speaks to the importance of panel members feeling as prepared as possible in advance of a hearing.

Panel members provided examples of what helped them navigate information in reports. Christine told me she found subheadings such as ‘current circumstances’ at the front of a report helpful, or when social workers used bold typeface to highlight updated sections. Gordon agreed that signposting was really important and suggested social workers use headings such as ‘where were we last time?’, ‘what’s working/not working?’, and ‘what are the options?’. Cora commented that the use of headings across a group of sibling reports made it easier for her to skim read where there was repetition of information. Interviews with Eve and George in 2021 indicated that some social workers were now using an updated report template which in Eve’s view had resulted in more structured reports. She described some of these reports as containing a ‘future predictions’ section which she found very useful. This outlined what would be ‘good and bad’ for the children about the different options available. George also acknowledged having seen some reports using a new layout which put the social work recommendations first, and the child’s view second, but otherwise he was less convinced there had been much change in the quality and presentation of reports.

Of the reports that were less than praiseworthy, Annie and Anthony had the following to say. Annie described some as being ‘just appallingly written’, with ‘no paragraphs, it’s almost impossible to read sometimes’, while the majority of reports disappointed Anthony:

If I’m being really honest, I would say ninety percent of them, the quality is shocking, where it’s cut and paste jobs, child’s name’s wrong, dates of birth wrong, the chronology’s really really difficult to follow.

(Anthony, interview)

In Kenny’s view, ‘the problem with social work reports is that they take stuff out but don’t read over the whole report’, and that this affected coherence and readability. He described ‘losing the will to live’ over the level of repetition in some reports, while Helen similarly acknowledged:

Yeah, the reports, there’s a lot of repeating, I know it’s hard, but it’s that bit of, you get a good social worker, you could probably get the story on two pages.

(Helen, interview)

These comments also suggest structural issues involving the templates for social work reports may be at play, with information expected across multiple sections, increasing the risk of repetition.

That editing is needed to improve the readability of reports will come as a surprise to no-one, but the impact on panel members having to read poorly written, repetitive reports is also important to acknowledge. If a child's circumstances and needs are not clearly presented in a report in advance of a hearing, not only is it likely to place additional cognitive demands on a panel member to make sense of the information in the first place, it may lead to a poor evaluation of the social worker who wrote the report. George stated this particularly clearly when he said in his interview that a poorly written report affected a social worker's 'credibility'. This may in turn impact on verbal discussions in a hearing, and whether a social worker's recommendations are likely to be trusted. This is consistent with the anchoring and adjustment heuristic described in the decision-making literature, as noted in Chapter 3, which posits that if first impressions are low, these can be difficult to alter (van Boven *et al.*, 2013; Keren and Wu, 2015). This is a particular concern given some of the long-standing reports of tensions in professional trust between panel members and social workers (Bruce and Spencer, 1976; Gadda *et al.*, 2015; Kurlus *et al.*, 2016; Hill *et al.*, 2017),

There was some recognition of the challenges facing social workers in preparing reports. Helen's comment above, about knowing it was 'hard' for social workers, illustrates sympathy for their role. Anthony acknowledged the disadvantages posed by the shared nature of reports which may have had multiple social workers writing and shaping them over the years. Gordon, Murray and Helen acknowledged the time pressures and workload demands faced by social workers, with Helen observing that 'it must be time-consuming for social workers to write these plans and all of the different notes and all the reports'. George, after expressing frustration with what it was like to read a poorly-written report, acknowledged:

...and that's from a user's point of view. From your point of view, you haven't got the time to do it, that's the balance.

(George, interview)

These comments touch on familiar issues for social workers; excessive workload demands and the need to prioritise and balance competing tasks are not new (Laming, 2003; van Berkel and Knies, 2015), and highlight bigger tensions at play in the system. For the panel member, the priority is being able to understand the key issues affecting the child, and what decisions can or should be taken to try and alleviate any difficulty. For the social worker, even if they understand the child's needs and circumstances, other workload pressures may mean report-writing will not, or cannot be prioritised in the way panel members would prefer. These issues all speak to common concerns about public services and the pressures they are under.

Supporting this argument is the observation that report-writing skills were not contingent on experience in this study; panel members were observed heavily criticising a social work manager for a poorly written report while on several occasions praising newly qualified social workers for the clarity of the reports they had submitted. This included Anthony, who in spite of his vocal criticism of social work was quick to acknowledge the 'really good' quality of reports he'd read by newly-qualified workers. Reflecting on this, Anthony suggested lower workloads amongst newer workers might play a part, or simply that 'more effort' had been made. Given that workload burden and complexity tend to increase in tandem with social work experience, the time available to social workers to analyse complex, incomplete and often contested information, before distilling this into readable reports for panel members may often be severely limited. Anthony's remark about 'effort' also implies that he sees writer motivation as a factor in the quality of reports, highlighting the observation made earlier that panel members make different assumptions regarding a social worker's circumstances and that this may contribute to their overall view of the assessment contained within.

5.3.2 Strategies for Managing and Processing Information

Faced with some of these presentation challenges, panel members identified a number of strategies they found helpful in making sense of the paperwork. While the more typical tendency was for panel members to start with the body of a report first, others such as Mark looked at the recommendations first:

I normally tend to go straight to the social work's recommendation, because what I'm looking for in my head is, right what are we looking at here, is this likely to be a

controversial one, or, you know, what's the general feeling of it, I'll go to the original grounds, and have a look, why did this child come into the hearing system in the first place, I will then, then go backwards and go to the last hearing, so what was the last hearing, what happened at the last hearing, try and get a bit of a sense of what's kind of going on.

(Mark, interview)

Mark's approach to navigating reports shows how he sifts through information trying to make sense of the child and the child's circumstances. His approach also serves as a reminder that while panel members may dislike lengthy sections on family background, the need to locate and understand current recommendations against the wider context and history of the child is still important for them. That he chooses to look at the original grounds and past hearing decisions rather than solely the information contained in the report is a reminder of the usefulness of these documents despite some of the overall criticisms about volume of information. Mark's length of time as a panel member (at the time of first interview he had already been a panel member for seven years) and familiarity with the various pieces of information also speaks to skills in sensemaking and an ability to navigate the paperwork that less-experienced panel members may have yet to develop.

The value of chronologies also tended to vary across panel members. While Anthony really appreciated one if it was 'clear', Melissa stated she 'hardly ever looks at the chronology' because it was often so long. Many chronologies in reports can involve pages and pages of historical events. While the use of chronologies in social work assessments is heavily emphasised in practice guidance (Care Inspectorate, 2017) and serious case reviews (Laming, 2004), the approach taken by panel members suggests that while detailed chronologies may be essential to social work analysis, they are of far less value to panel members unless succinct.

George spoke about 'speed-reading' through sections on parental history, while Judith described scanning reports for progress or otherwise: 'basically we need to see if anything has changed'. The management of duplication of information across sibling reports was also noted. In a single hearing held for a sibling group, panel members will be given a full hearing report for each child. This can result in a substantial amount of identical content being replicated across multiple reports, particularly around

background detail. Kathleen recalled a hearing for a group of five siblings where she was given five copies of what she described as essentially the same report, voicing frustration at having to 'trawl' through each report looking for any differences, while Helen talked about a grounds hearing where the reports for four siblings were identical 'apart from one paragraph in each one'. Mark's skills in navigating all of the information were echoed by Christine who commented that it took 'experience' to be able to scan and search for the differences between sibling reports when much of the content was otherwise the same. Her strategy was to read the oldest child's report first then only look at the specific parts of the siblings' reports where there were clear differences. Josh meanwhile, said he preferred to read sibling reports side by side, paying attention to where the reports diverged from each other.

These strategies speak to a need to make sense of considerable amounts of information which can be complex, detailed and contested, consistent with the research which suggests we rely on different shortcuts to reduce cognitive burden and to simplify decision-making (Doherty, 2003). They show there is value in those producing the reports and other information provided to panel members understanding these processes.

5.4 Making Sense of Information

We have seen how panel members view the information provided to them ahead of a children's hearing, and what they say helps or hinders them making sense of the issues presented to them and the decisions they are being asked to make. This final section turns to look at what shapes how panel members make sense of some of the information and issues involving children and their families. It examines issues of balanced reporting, the relevance of authorship – who is doing the writing or speaking? – and how many perspectives on a child's circumstances are offered. In doing so, it is argued that the findings in this chapter serve as a reminder that report writing is a form of social practice, and implications for decision-making are discussed.

5.4.1 Balanced Reporting

Alongside the variability in clarity and organisation of information reported by panel members, the ability of social workers to present a balanced account of parenting capacity in reports was also questioned. Panel members felt social workers didn't always achieve a fairness in their reporting of issues. Anthony said social work reports could read like 'a catalogue of mistakes of the past' described in 'graphic detail', 'accusatory in tone', and even 'inflammatory' on occasion. Describing a recent report he'd read in which future plans were positive and not being contested yet in his view the child's background and history greatly overshadowed current progress in the report, Anthony said it was 'fair criticism' that children and families viewed reports as 'always looking backwards'. These comments not only serve as a reminder of how unwelcome extensive past histories of a family can be, but of the difficulties social workers face in how they present information. It also risks reinforcing a sense amongst panel members, as explored further in Chapter 8, that social workers lack 'objectivity' and can be poor independent advocates for a child.

The impact of any 'catalogue of mistakes' was also a concern for other readers.

Reflecting on the volume and detail of reports, Frances asked, 'what's it like for the child [to read these]?', a view shared by other panel members who expressed concern for children and families having to repeatedly read the details of their difficult experiences across multiple hearings. This serves as a reminder that the child needs to be central, not only as the object of the report but as the reader (Dyke, 2023), and also recognises the power exercised by social workers in the writing process when constructing the 'at risk' child or 'risky' parent (Hall *et al.*, 2006).

Alongside this were concerns that social workers also avoided adding information to a report because of how a parent might react or how it might affect a working relationship with a child or family. This could leave panel members second-guessing at issues as Joan notes below:

If you know something that you think's really important, then you have to put it in the report, or you have to tell us, but don't expect because you know it, if you're not wanting to say it in front of the family, then we don't know it, you know. So, sometimes you get people who are quite awkward about saying, you know, what mum has actually done although mum knows what's she's done, or what's dad done

with regards to neglect et cetera, and they don't want to actually say it but they've seen it, but you can't read between the lines, they have to put it in the report, they have to be brave and say, you know, child was full of head lice, didn't turn up to school, doesn't you know, doesn't meet appointments, doesn't, you know, is hungry.

(Joan, interview)

This was also echoed by Vicky who in a conversation with Denise commented that information can be absent in reports because social workers want to avoid antagonising the family they are trying to work with. Observational research by Griffiths and Kandel noted similar strategies by social workers in hearings, where facts could be skated over or presented vaguely in an attempt to try and maintain ongoing relationships (Griffiths and Kandel, 2009b).

Feelings about 'absent' information could be strongly expressed. After a difficult ICSO hearing involving a recommendation of full cessation of contact between child and parents, George described feeling 'blindsided' by what he perceived to be unexpected recommendations in the social work report. In his view, these did not match with evidence put forward in previous hearings. George and his colleagues Ross and Elaine communicated that three weeks previously, the decisions did not indicate concerns of such seriousness that at the next hearing social work would be looking at stopping contact completely. They felt that successive social work reports should have made the concerns clearer so that the panel members were better prepared for the recommendation.

In George's case, if under-reporting of concerns was the issue, it highlights the challenges involved for social workers in trying to write in a fair, balanced and informative way; had the social workers provided a more critical and concerning perspective the evidence presented earlier in the section suggests they could have faced accusations of being too negative. George's use of the word 'blindsided' also speaks to how he felt at the hearing and raises questions about how prepared panel members can really be for the emotionally-charged nature of some hearings, as explored further in Chapters 6 and 7.

5.4.2 Multiple Perspectives

Alongside a desire for balanced reporting in social work reports was a strong preference for multiple perspectives on a child's circumstances. Information and reports from other professionals and agencies were viewed as being valuable, and used to evaluate social work recommendations as Mark outlines here:

Normally you get, there might be a recommendation from social work, there could be a contact centre report, so you might look at that, and you look and see do these recommendations kinda match up? So is everyone saying the same? There could be a health visitor, another report in there, and again does that one kind of match up, and more often than not they do. There's the odd occasion where they might not, and, there might be a recommendation that somebody's saying, we're saying contact should stop, and somebody else's recommendation is we think contact should continue, maybe be reduced, and then it's, I think the biggest thing, the hardest thing I think for panel members to deal with, I certainly find, is contact.

(Mark, interview)

Mark's description of the 'matching up' of recommendations and evidence from different professionals such as contact centre workers³² and health visitors suggests multiple sources of information can provide a level of reassurance in decision-making. This was reflected in one hearing where panel members Polly and Gordon repeatedly expressed appreciation of a nursery manager's report. They commented that the information provided was detailed and specific; it included information about the child's eating, toilet training, attendance, health issues, emotional well-being, speech and language development, and meetings the parent had attended or missed, and appeared to connect this information clearly to the concerns and recommendations, many of which involved issues of neglect in relation to the child's health. Polly commented before the hearing on the 'helpful' information contained in the nursery

³² Provision for supporting contact varies across regions and local authorities in Scotland. Supervised contact can take place using social workers or social work assistants working in the same team and under the same line management, using a range of local venues such as libraries and soft play centres. Alternatively, contact may occur in designated buildings where contact workers are employed as part of a specialised service to provide varying levels of support and supervision as set out in the child's care plan, as was the case in City A. While these services may also be part of the local authority, workers are managed separately from the social work team. In the local authority area covered in this research study contact centres were routinely used.

report, then afterwards she and the other panel members agreed that it was the nursery information (both the written information and the verbal updates provided in the hearing) that ‘swayed things’.

The desire for multiple professional perspectives was particularly evident when recommendations were being heavily contested such as in decisions involving birth family contact. Denise commented one day that she felt there had been an increase in contact workers providing independent reports and attending hearings, and that for her this additional perspective to the social work report could aid decision-making. However, consensus or shared analysis or opinion across professional reports was not accepted uncritically. After another hearing, Joan reflected on the quality of reports which had been provided, describing how similarities in the social worker and contact worker reports made her question the ‘independence’ of the contact worker’s recommendations, and implicit in this, the worker’s assessment.

Joan’s comment suggests a lack of trust in social work assessments may underpin some of the desire for multiple perspectives, and that perceived independence from social work is important. That panel members evaluate assessments in this way was also demonstrated by George in relation to the cessation of birth family contact case discussed earlier. During this hearing, George and his colleagues heard a contact worker share her concerns about the contact. When she had finished talking, George said to her, ‘in the past I’ve heard you argue against social work’, acknowledging his previous knowledge of her and her practice, and crucially for him, an ability to offer evidence and an assessment which disagreed with social work. Then, after the hearing had ended and the panel members were reflecting on what was in George’s words, ‘a very difficult hearing’, he commented:

I’ve watched [the contact worker] go hammer and tong against social work in the past. That was key, her view.

(George, observation)

George’s previous knowledge of the contact worker’s ability to strongly challenge social work assessments shows how previous knowledge of this worker, and her perceived independence from social work, is shown here to influence his final decision (‘that was key, her view’). Joan’s desire for reports that were ‘independent’ of social work, and

George's trust in a professional known to question social work recommendations, indicate social work reports alone are often not enough in contested situations to convince decision-makers of the merits of recommendations, and that other professional perspectives are beneficial. Previous research has shown similar tensions in how social work reports are valued by lay decision-makers in the Children's Hearings system, with some panel members questioning the ability of social workers to be 'objective' in their assessments (Hill *et al.*, 2017). Social workers have also faced challenges in terms of their perceived independence in report writing in Irish child care court settings (Burns *et al.*, 2017).

If there is sometimes a resistance or reluctance to see social workers as being able to advocate independently for a child, then this raises questions about how a child's views and best interests should be best represented in a hearing. At the same time, it could be argued this is simply a reflection of a system operating in a way that seeks to make sense of competing narratives and where it should perhaps be good practice for the child's views and circumstances to be presented by more than one individual or institution. The importance of collating information from different sources and reaching judgements on a wide range of evidence has been well-documented through research on serious case inquiries involving the serious injury or death of a child (Munro, 1999). These issues relating to who is presenting the information and how it is received are discussed further in Chapter 8 when the ways in which children's views are represented by others when they are absent from their hearings are discussed.

5.4.3 Sensemaking

In addition to questions about balance and perspective, and regardless of the intentions of any report writer, there will be individual variation in interpretation and understanding in every panel member. Differences in how panel members interpreted information were evident in how they talked about issues with their colleagues before and after hearings, how they interacted in the hearings and the decisions they reached, and what they reflected on in interviews.

One hearing involving a child's supervision order included regulation of contact with their non-resident parent. The child and both parents were present in the hearing when one of the panel members was observed asking questions which appeared to make the

child and some family members uncomfortable. Joan, one of the other panel members, later reflected in her interview on the decision-making that had taken place. In Joan's view the social work report was clear on the issues, and recommendations were obvious, and she said she didn't understand why her colleague had sought to probe the child given the delicate familial dynamics regarding contact:

Joan: It was quite explicit in that report, it was well written. I don't know why we had to actually go into that, I thought it was quite clear why, it didn't say, 'so [they] doesn't have to tell [the parent]', it just kind of said, it gives [them] the security that [they] need to be able to manage the situation around contact.

Carol: And did you feel that it was quite carefully worded?

Joan: It was quite clear, I didn't think we had to go there, I think it was quite clear.

(Joan, interview)

For Joan, the report had appeared clear and well-written. However, her comments indicate that a certain level of 'reading between the lines' was still necessary. As Joan herself notes, the report did not state specifically that the condition of contact was in place to help the child manage the relationship with the non-resident parent. Joan went on to acknowledge that this situation highlighted the differences in understanding which can occur even when the same information is presented, and that her own professional background and knowledge was likely to have played a part in her ability to read and interpret information from the report and understand the child's situation in a way that did not seem available to the other panel member.

Differences in understanding and comprehension were also evidenced in comments made between panel members Liz, Charlotte and Bruce following a grounds hearing which had featured concerns about a parent's previous history of domestic abuse and recent allegations of physical chastisement against his child. The three-year-old child was not present, but the nursery worker, to whom she'd shared that her father had hit her, had provided a report which Liz had described as being 'very good'. The worker stated in the hearing that the child's emotional well-being was a 'cause for concern' and that they were worried that the child's allegations against her father were not being believed. The father denied all of the allegations, but presented as amiable and engaged enthusiastically with the panel members.

Given the age of the child and the father's denial of the supporting facts, the panel members made the decision to send the grounds to the sheriff for proof. They stated they viewed them as 'too serious to discharge'; however, after the hearing had ended, Bruce was observed to comment that if it hadn't been for the historical concerns, the hearing 'wouldn't have been necessary', because there were 'no concerns about abuse'. His colleagues Liz and Charlotte instantly responded to this, saying, 'there were concerns about [his behaviour towards] the girl', to which Bruce replied, 'ah, yes, apart from that'. Even when reminded by his colleagues of the concerns for the child Bruce did not appear to give these the same weight, suggesting that his assessment of risk to the child differed considerably from his colleagues despite them all having been provided with the same information in advance, and the concerns from the nursery worker being reiterated in the hearing. In this situation, the allegations made by the child against the parent were articulated in the written reports, and reiterated verbally by the nursery worker, yet Bruce's comments suggest the concerns were not as salient for him.

Further discussion around the issues around domestic abuse between the panel members ensued, as my field notes from after the hearing demonstrate:

Charlotte and Bruce state their view that the supporting facts were 'mild'. They note that the grounds were for assault against another partner. Dad has a conviction for this.

Liz: they [the couple] were very lovey dovey

Bruce: yeah, sometimes get a bit suspicious

Charlotte: definitely partially for show

Bruce: they know what they want you to see, need to be a bit sceptical.

(Contemporaneous fieldnotes, Hearing 44)

This interaction highlights further points about panel member understanding and interpretation of information. Here we see two of the panel members comment that the supporting facts for the legal ground involving domestic abuse were 'mild'.³³ While they recognise that the child's father has a conviction for domestic abuse, the relevance of this is seen to be somewhat downgraded because it was against a previous partner. At

³³ under s.67(2)(f) of the *Children's Hearings (Scotland) Act 2011*, which states that *the child has, or is likely to have, a close connection with a person who has carried out domestic abuse*

the same time, all three panel members are shown to pick up on cues in the hearing that make them feel mistrust regarding the parents' relationship. This snapshot, while brief, touches on a range of issues regarding (mis)understandings of domestic abuse including the relevance of past history to current relationships, and the impact on child development.

These examples show that the concept of 'clarity' in report-writing encompasses more than just better organisation, presentation and content; rather, differences in individual knowledge and experience frame and shape the understanding of information. A desire for clarity with respect to reports may also be a reflection of the wider difficulties in having to make decisions under conditions where information is frequently uncertain, incomplete and contested, as noted above (Saltiel, 2016). From this perspective, the conversation between panel members such as Kathleen and Cheryl who, while chatting ahead of a hearing one afternoon, talked about the uncertainty of decision-making, take on a different meaning:

Cheryl: at the last hearing, I just wasn't sure, right to the end.

Kathleen: sometimes it's just a niggle when the decision isn't clear cut - you are left feeling you want something more.

(Contemporaneous fieldnotes, Hearing 4)

The feeling of information not being 'clear cut', and wanting to know more may not be about a shortage of information but rather it mirrors the everyday reality of much of social work practice in that it is an 'untidy, unpredictable business' (Howe, 2009, p.193).

How these panel members made sense of information highlights the challenges for social workers of communicating to a diverse group of panel members with varying levels of experience and knowledge drawn from different sources. As outlined in Chapter 2, although panel members may bring a range of relevant experience to the decision-making process in the Children's Hearings system, they are volunteer decision-makers and as such are not expected to be, nor do they receive training to become, knowledge experts in the same way as other professionals involved in the system. This means social workers should ultimately be aiming for a lay audience when writing their reports and explaining their recommendations. While the content of reports in many ways can be very 'everyday' – about family life, relationships, school – the analysis and recommendations also often rely on expertise and knowledge not known to every

reader, serving as a reminder that reports need to be written in a way that avoids assuming domain knowledge, and that the expertise of social workers, like in other professions, can make it difficult to avoid what has been described as the 'expert blind spot'. This is where what is obvious to a social worker may not be as clear to a panel member, and that this may lead to differences in how issues are communicated and understood (Nathan and Koedinger, 2000).

Little is known about how lay and professional knowledge interacts amongst individual panel members, and between social workers and panel members. In my observations, differences in interpretation were observed amongst panel members in their understanding of concerns outlined in reports, as the examples above involving Joan and her colleague, and Liz, Bruce and Charlotte showed. There were also occasions when my interpretation of concerns and social work recommendations was different from panel members. In the hearing described in the previous section, George described feeling 'blindsided' by the recommendations in the reports to stop contact. While I had not read the reports, I was curious as to why I did not experience this recommendation as unexpected. Based on my observation of the hearing, the social workers had worked hard to support the parents. Significant risks had been identified and I understood from my own professional experience what these were likely to mean³⁴. I also understood the complexities of trying to put help in place, balancing support for the parents with concerns for the child.

Research in court decision-making has shown that tacit signals in interactions mean that professionals understand 'silent knowledge' being communicated (Bergman Blix and Wettergren, 2018), and social work decision-making is understood to rely heavily on professional intuition (van de Luitgaarden, 2009). At the same time, the dominance of the child protection paradigm in social work means that shared frameworks of understanding between social workers also need to be critically examined (Parton, 2009; Keddell, 2011). Regardless of the reasoning, the differences in understanding between 'common sense' and professional knowledge in layperson decision-making can be seen to give rise to differences in understanding which may be difficult to articulate or resolve, and which may add to the challenges for social workers of effectively communicating to a layperson (Liljegren *et al.*, 2018).

³⁴ In order to protect the confidentiality of the parents, specific details have been omitted

Adding to these challenges is the fact that when social workers write reports, information must be openly shared even if very sensitive in nature. Only in cases where information, if articulated in a report, might for example put someone in danger, are there legal parameters which permit and justify the restriction of information (Norrie, 2022). Panel members' accounts indicate that social workers face challenges in writing a report which conveys necessary information to decision-makers while avoiding being perceived as overly negative as well as managing sensitive or difficult situations between different family members, or trying to maintain working relationships with children and families who may strongly disagree with aspects of the analysis or recommendations. Familial relationships, and relationships between family members and professionals, can be delicately balanced, and careful wording may be essential to be respectful and sensitive to different participants in the hearing. As Joan indicates, a certain amount of 'reading between the lines' can be required when making sense of hearing reports. Her comment suggests social workers may feel they need to use a variety of linguistic devices to deliberately convey information in a tentative, less direct way, with implications for how information is understood by panel members and family members alike.

5.5 Conclusion

Panel members can be provided with a range of information to support their decision-making; however, social work reports serve as their primary and only legally-mandated source. Social work reports play a key role in helping panel members prepare for the decision-making that takes place in a hearing, but a number of challenges and tensions exist in how information about a child is communicated and how this is understood.

This chapter shows that panel members often have to make sense of large amounts of information, sometimes poorly organised, and that despite clear expectations and guidelines with respect to the deadline for reports, late provision of reports still occurred, affecting panel members' ability to feel prepared for hearings as well as placing unfair expectations on them and relevant persons in hearings to digest this information, under pressure, at short notice. In other instances, such as hearings involving reviews of interim orders, updated reports were not requested by SCRA and

social workers often chose to provide verbal updates instead. This left panel members reliant on these verbal updates and therefore feeling less prepared for hearings.

The content of social work reports was also noted to variably affect panel members' readiness for the decision-making task. Reports were criticised for containing excessive amounts of background information about parents which panel members viewed as being irrelevant for the decision-making task, consistent with other studies which have found background information is presented unnecessarily in social work reports, in contrast to social workers' views of past circumstances as being an important predictor of parenting capacity (Brandon *et al.*, 2008; Kurlus *et al.*, 2016). There was an indication that too little analysis or linking of the information to current circumstances and recommendations may play a part in this. Conversely, panel members felt reports tended to lack a focus on the child and detailed future plans.

Factors involving the presentation of information were noted. There was criticism of poorly-edited, poorly-structured reports that were difficult to read, but also praise for reports which were described as clear and easy to understand. Newly-qualified workers came in for particular commendation, with panel members speculating that their report-writing skills may be a reflection of more time and less complex caseloads. Pressures facing social workers in having the time to produce good quality reports were acknowledged. It was also recognised it could be hard to write in a way which balanced the need to communicate information while remaining sensitive to the impact of these reports on children and families. While a well-written report was no guarantee of a positive hearing or outcome for a child, poorly-received reports appeared to impact negatively on the decision-making process through greater debate in hearings and panel members feeling less convinced by social work recommendations.

Duplication and repetition of information was also raised as an issue. Strategies employed by panel members to manage the volume of information included skimming or ignoring background sections, particularly if the information appeared to be repeated across multiple sibling reports. Panel members admitted that they often ignored chronologies; this is despite the emphasis in the literature and in policy regarding the importance of these. Panel members wanted content to be concise, and more specifically targeted towards the recommendations being made by social workers, as well as for the child rather than their parents to be foregrounded with the

information provided linked more directly to the child's situation, experiences and contact recommendations. While panel members reported that recommendations were occasionally absent, in general this was not noted as a major concern; instead, a more frequent issue was how well-supported the recommendations were by the information and evidence provided in the report, and also how well signposted this was – panel members wanted to know where to look for information.

Finally, the accounts from panel members in this study show that panel members felt social work reports were often too critical of parents and lacked balance, and that they preferred being able to make sense of a child's circumstances by drawing on multiple sources of written information, particularly when recommendations were contested. Having access to different (professional) perspectives appeared to help panel members feel more informed about the decisions they were being asked to make but at the same time this preference also implied a lack of professional trust in social work reports, with their assessments sometimes viewed as being less 'objective'. Although trust was present on occasion, as evidenced by panel members' praise for individual workers and their reports, in general the findings present a mixed picture of the sense-making process for panel members prior to a hearing. A function of written reports is to inform panel members of a child and their circumstances, and to make recommendations about future action: the findings from this study show that this is a complicated social and relational process. Communication involves much more than a simple transmission of information, it is shaped by who the writer is, which organisation the writer represents, the choices the writer makes in how the child's story is told, contested narratives, the knowledge and experience of the reader, multiple audiences, and the inherent uncertainties and complexities of the child's life and circumstances.

6 Interacting

Effective participation is a key tenet of the Children's Hearings system and Panel Members may find that relevant persons can display a lot of the behaviours above as a result of confusion, lack of understanding of the hearing's role and powers or an inability to understand or accept the concerns regarding their family. When encountering the behaviour discussed below, Panel Members should always consider whether a relevant person or child is able to understand and participate in the hearing effectively. If this is doubtful the hearing should consider whether the person needs help from an advocate or other representative to contribute constructively. The hearing may need to consider whether legal representation is necessary and consider whether the hearing should be adjourned or deferred to instruct a referral to the Scottish Legal Aid Board.

Practice and Procedure Manual (CHS, 2022a, p.249)

We have seen from Chapter 5 that the written information panel members receive prior to a hearing is central to the decision-making process and helps them make sense of the issues for children and young people. Chapter 6 now turns to look at the topic of communication and interaction in the hearing itself. This chapter explores how panel members engage with children and families and manage hearings. Meaningful communication and interaction, where individuals are able to express their views on matters affecting them and for these views to be taken into consideration, is a core element of procedural and substantive justice in any legal system (McKeever, 2020). Panel members have a key role to play in managing the interactions in a hearing, as the extract above highlights, therefore how individuals are supported to communicate and participate in hearings is central to the decision-making process.

Of the three panel members in a children's hearing, one is required to take on the chairing of the meeting. This involves ensuring the fulfilment of legal obligations in relation to the hearing as well as 'keeping communication constructive' (CHS, 2022a, p.248). However, all panel members have a role to play in managing hearings, despite the emphasis on the chair's responsibilities. Research in organisational studies and

sociolinguistics has shown that the use of different discursive strategies has an influence on the progression of discussion and the eventual outcome of meetings (Wodak *et al.*, 2011). The findings highlighted in this chapter show that panel members vary widely in their use of language and micro-level discursive strategies in hearings. These factors shape how hearings are managed and are crucial to how children and families understand proceedings and feel able and supported to participate.

This chapter begins by discussing how language affects participant understanding of proceedings and how supported they feel to participate. In particular, it looks at the use and impact of formal English, jargon, derogatory language and legal terminology. It then moves on to discuss how legal processes may inhibit interaction and engagement. Next, the chapter turns to examine other verbal and non-verbal strategies supporting participation and communication such as how panel members open a hearing, and explain, guide and address individuals. These findings highlight that not only do panel members, especially panel chairs, have a key role in supporting participation, but that the specific ways in which panel members speak and manage hearings have clear implications for decision-making and wider issues of fairness and social justice.

6.1 Language Use

Language use plays a key role in relation to participation and interaction in the decision-making process in children's hearings. Its importance is highlighted in the guidance for panel members provided in their Practice and Procedure Manual, which includes advice on ensuring children and families understand what is being discussed and can participate meaningfully in their hearings:

The chairing member has a duty to take reasonable steps to ensure that the child and each relevant person are able to understand and participate in the proceedings. This applies throughout the children's hearing. Panel Members should use plain English and age-appropriate language during the children's hearing, and apply trauma informed principles to all communication. They should avoid using unnecessary legal jargon, acronyms or organisational terminology such as 'the standard measure'.

(CHS, 2022a, p.73)

This manual also provides practical help in the form of a glossary translating key terminology into ‘everyday language’ (CHS, 2022a, p. 296). However, there has been little examination of the practical realisation of this advice in relation to participation and interaction in the decision-making process in children’s hearings. In this study, language use by panel members and other participants which was too formal, legal, unfamiliar or even derogatory arguably served to exclude children and families from understanding and participating meaningfully in the decision-making process.

6.1.1 Words matter

In this study, a pattern of more formal or ‘system’ language use frequently occurred amongst panel members and professionals in hearings, despite research showing that children and families want simpler language and less jargon used in reports and hearings (Hallett and Murray, 1998; McGhee and Hunter, 2011; Kurlus *et al.*, 2016). Examples included panel member Denise seeking a mother’s views on permanence plans for her baby by asking, ‘how do you feel about the recommendation that the baby not be *rehabilitated* home?’, and Gordon confusing a foster carer by asking a question about how she felt about the ‘*route*’, the meaning only becoming clear to her when the social worker stepped in to answer on her behalf about the plan for the child to continue living with the foster carer on a permanent basis. On another occasion, Denise was observed using the term ‘delivery incident’ when talking about an offence which had allegedly been committed by a young person, then making reference to this young person being on the ‘periphery’ of the offending behaviour, to which the young person’s mother responded, ‘I don’t understand’.

Social workers and other professionals also relied on formal language or professional jargon in proceedings. In hearing 33, a social worker was heard to make reference to a ‘placement breakdown’ but that the young person, a 16-year-old boy who was present in the hearing with his ‘kinship carer’, was now happy in his ‘home environment’ (in short, things hadn’t work out living with his dad but he liked living with his aunt). One social worker was heard telling panel members and a parent, ‘it’s imperative that the children’s future is secured’ while another talked about ‘life story work’ without explaining what this entailed. In hearing 58, a social worker described how a child had ‘built up attachments’ with his foster carer and was now much more ‘emotionally

regulated' and had a 'secure base'. This was followed by a panel member, Christine, asking the social worker, 'do you think it's possible to amalgamate [the sibling contact arrangements]? to which the father asked, 'what do you mean?' This same parent was later heard telling the panel, 'I have learning difficulties', but despite this reminder no moderation in language use occurred, with panel member Richard later heard to utter, 'we will consolidate our advice to the sheriff court'. This use of formal language and jargon by panel members and social workers had a clear impact on children and their parents, as evidenced by the instances where parents expressed that they didn't understand what was being said. It is also likely that problems with understanding occur more frequently than simply when this is raised by participants. This indicates that the use of formal language use and jargon is a barrier to meaningful participation and the sharing of information in the decision-making process.

Sometimes language use was problematic because of the way it negatively described a child or parent, an issue already touched on with respect to the discussion on reports in the previous chapter. In hearings involving two separate seven-year-olds, teachers described one as being 'quite aggressive, angry in his behaviour', and the other as 'violent', but did not offer further detail as to what might be underpinning these behaviours. Reports may have provided more nuance but these are not provided to every participant. How a child is constructed in discussion has implications for decision-making: categorisation can perpetuate stigmatising identities and fail to provide crucial detail needed for a nuanced response to the child's needs (Hall *et al.*, 2003; Dyke, 2023). This kind of negative language use could also, unsurprisingly, be upsetting. On another occasion, panel member Melissa was heard using the word 'disturbed' to describe a primary school age boy. After being angrily rebuked by the child's mother, Melissa apologised, correcting herself with some help from her colleague Christine, changing the description to 'anxious'. Aside from the stigma associated with this kind of language use, such terminology was unlikely to encourage positive participation of the child's mother in the decision-making process.

Some panel members were cognisant of how problematic language use in hearings, whether face-to-face or in reports, could be. Anthony shared his dislike of the use of professional acronyms, such as 'the term LAC, looked after child, I hate that', questioning why it continued to be used when children had made it clear in feedback

that they didn't want this term used, while Donald was critical of the term 'chaotic lifestyle', describing it as a phrase social work frequently employed to cover 'a sort of range of sins'. He also conceded that at times the use of jargon or formal language use by panel members was almost automatic, and a difficult habit to avoid, despite the barriers it posed to communication and understanding. Donald noted his own mistakes in this regard, acknowledging that he would sometimes say, then regret using, terms such as 'substantive decisions', or, when making a decision using the word 'reside' rather than 'live', but described trying to avoid using formal or complex language as 'difficult', adding, 'I think we all find it difficult, and very often we're not aware of it'.

Joan explicitly talked about how language use could pose a barrier to participation and justice for children and families, reflecting in her interview that issues such as complexity of information, stress, low literacy levels and other aspects of a child or parent's personal circumstances such as poor mental health could impact negatively on the ability to understand and meaningfully take part in proceedings. Annie shared similar views, highlighting her concerns about what she saw as a basic inequity within the system in terms of how participants are able to communicate in hearings:

The other thing that I think a lot of people have seen and, is a problem within the hearing system is, that there's a sense, there's a sort of fundamental, sort of dichotomy at the heart of the hearing system, I think, in that the people who are on the panel tend to be quite articulate and able to express themselves, and the people who are, who the hearing is being called for, tend to be less articulate, and so it's much more difficult for them to get their views across, and so they're disadvantaged, and it's not fair, it's not a very fair situation because, I think it's better if they can bring legal, if they can have a legal rep then I think it's better. A lot of them don't have legal representatives, or another an advocate, and find it very difficult to you know put their points across, very difficult.

(Annie, interview)

Not only did Annie feel discussions in hearings privileged panel members who were, in her words, more articulate, she expressed concerns that some of these asymmetries of language use and interaction reflected problematic judgements of children and families:

I almost hate to say it but there's an, there is a feeling, a small feeling I think of, superiority amongst panel members towards the families, and that's something that we, I think as the children's hearing we need to work on.

(Annie, interview)

Joan and Annie's comments about the barriers to communication for children and families in different ways show a recognition of the power differences involved in the interactional processes of hearings. Annie's description of panel members as more 'articulate' and the children and families as less so captures this particularly well, because if panel members were as articulate as Annie sees them to be, then it is unclear why they would not have the ability to grade their language use accordingly. While recognising Donald's point that this can be difficult to do, these differences in linguistic interaction suggest that being 'articulate' serves a purpose for panel members in seeking to maintain different identities within a hearing and distancing themselves from children and families. This is recognised by Annie when she talks of her concerns (and in using the word 'we', includes herself in this) about a sense of superiority and judgement amongst panel members. Similarly, Anthony also commented that he felt that the hearings system was 'a bit too 'judgy' for me sometimes'. In this light, being 'articulate' takes on a different meaning; it becomes seen as a choice amongst panel members as to whether or not they adapt their language use and ensure there is a genuine invitation to children and families to participate in the decision-making process.

We have seen how words matter for communication and interaction in children's hearings. These next two sections now turn to particular areas where the use of language was of particular importance.

6.1.2 Delivering Decisions

The use of language in children's hearings was particularly important when decisions were being delivered. In a hearing, once discussion of the issues is seen to be coming to an end, the panel chair will typically offer a final opportunity for participants to contribute, then check if the other two panel members would like to ask further questions or are ready to make their decisions. Panel members do not confer; decisions

are made individually, although it must be recognised that as decisions are given orally the first panel member has the capacity to set the tone or influence other panel members by the simple nature of going first (Griffiths and Kandel, 2009b). More than one decision may be made, and for each decision a reason must be given. There should be a clear justification for each reason, based on the presented evidence, avoiding vague or ambiguous language (CHS, 2022a).

Some panel members were observed to employ a very explicit ‘decision then reason’ format, such in the fieldnotes extract below, in a hearing for a teenage boy, when Judith said:

‘My decision is that we’re going to continue the supervision order’ and ‘and the reason for that is, it is important that the supports are there...’

‘So, that makes it a unanimous decision, we’re going to continue the order exactly as is... live with dad, supervised contact with sisters.’

‘You have a right to appeal’ – she clearly directs this to all the relevant people – ‘and social work can call for a review at any time’.

(Contemporaneous fieldnotes, Hearing 3)

As well as using the phrases ‘my decision is’ and ‘the reason for that is’, Judith employed a succinct style of delivery and sought to explain exactly what continuing the order would mean for the child in saying, ‘live with dad, supervised contact with sisters’. Although Judith’s use of the phrase ‘supervised contact’ reflects some of the concerns discussed above, she delivered her decisions in a clear and straightforward manner. This was in marked contrast to her colleagues Theresa and Pete whose decisions and reasons in the same hearing were long-winded and poorly-articulated. Similar observations occurred in another hearing in which Richard and Cora were seen to rely overly on formal language and lack clarity in their delivery, the impact on participant comprehension arguably reflected in my observation from this hearing that ‘*mum and dad are looking blankly at Richard*’ as he took a long time to sum up and appeared unable to avoid using formal language.

These observations show how forming and delivering decisions can be a challenging task to do well, and that if decisions rely on formal language and lack brevity and clarity, children and families may not always understand what decision has been made. The importance of paraphrasing and reiterating decisions for the purpose of participant comprehension, as demonstrated by Judith cannot be under-estimated given the

potential for participants to leave a hearing without fully understanding what decisions had been made. This was highlighted most clearly in a hearing involving two children temporarily living with their grandfather. The hearing had been characterised by high levels of formal language use amongst the panel members and professionals. The father's wish was to see his children more regularly but the panel members made the decision to maintain rather than increase current levels of contact. However, despite the discussion in the hearing and the panel members delivering their decisions to this effect, the father's final question after this was, poignantly, 'so, can I see them more?', demonstrating he had not understood what decisions had been communicated.

There was recognition amongst panel members that delivering decisions was not straightforward. Donald said he tried to make a point at the end of the decisions, of:

Trying to sort of summarise it, in, you know, if you like, normal language, you know, you've got to be staying there, and, you know, it could be another year, but, you know, social work could decide that, you know just sort of try and put it into words that are going to make sense. But, as I say, it's, it's difficult, and I think we, I think we all find it difficult, and very often we're not aware of it.

(Donald, interview)

Similarly, Joe, a newly-qualified panel member, when asked about the challenges he faced in decision-making, said that 'the most difficult bit is articulating your decision and your reasoning, and why have I come to that'. While describing the initial panel member training to be 'very good', he felt more time could be spent as part of initial training in supporting panel members on how to give decisions and articulate their reasons. Joe described some panel members as being long-winded when delivering their decisions and said that in his view, 'I don't need to be too clever, I don't need to be too fancy, and wordy, as long as I give my reason in a succinct, clear, unambiguous way'. He said he had been able to learn from others whom he felt managed this task better, picking up on helpful 'turns of phrase' he could adapt and use for himself and that he now felt more comfortable with the process. He also emphasised the importance of using 'warm words' and 'showing a bit of empathy' when delivering decisions, and that it was important to recognise with participants if it hadn't been an easy decision to come to and that it might not be a decision that was welcomed. The importance of

empathy, and the challenges of delivering decisions without any ability to adjourn and prepare these, is discussed further in Chapter 7.

The issue of how decisions are delivered has also been acknowledged in the hearings redesign report (Hearings System Working Group, 2023). In particular, the format of each panel member delivering their own decisions was noted to be distressing for children and families, and viewed to impact on the quality of panel member decision-making. Under current consideration is a proposal to allow for a short adjournment followed by the delivery of a single decision with the aim of minimising distress and increasing the 'quality of decisions and written reasoning' (Hearings System Working Group, 2023, p. 161). The response from the Scottish government was to support this recommendation pending further consultation (Scottish Government, 2023a).

6.1.3 Discussing Contact

Another area of particular challenge with respect to communication practices and language use amongst panel members involved discussions around birth family contact. As noted above, in the description of Judith's delivery of decisions, panel members could sometimes use the word 'contact' with children and families rather than everyday expressions such as, seeing your siblings. Despite Judith's use of this word in her decision, she was otherwise observed to avoid using this word. For example, on one occasion she was observed seeking permission to speak to a 13-year-old boy on his own at the start of the hearing, asked for his views on contact then summarised this for the rest of the participants when they returned to the room. Crucially, she talked only about 'seeing your mum'. Similarly, Eric was observed speaking to a young person and asking him about 'seeing your brother', while Polly was heard to use the word 'contact' at the beginning of a hearing then self-correct when talking directly to the young person.

Other panel members and professionals relied more on formal terminology. In a hearing for a 16-year-old girl in which she and her parents were present, Donald addressed the social worker asking, 'is contact going well?', with the social worker's responses including the word 'siblings' and 'contact' rather than the words 'brother and sister' or the children's names. This also highlighted Donald's difficulties in avoiding the use of formal language despite his awareness, as documented above, of the need to do so. The importance of everyday language use in maximising communication and understanding

was also evident in another hearing in which Richard was observed asking a foster carer in another hearing ‘what are the plans for contact between the other siblings?’, confusing her slightly and prompting her to double check, ‘you mean them seeing their brothers?’

Other professionals were also seen to contribute to discussions using formal language use. In hearing 31, where the parents but not the child were present, a team leader provided her assessment of contact between the child, currently living with a foster carer, and his parents. Using phrases such as ‘we constantly review contact’, and ‘we need to look at the benefits of contact’, she emphasised that contact needed to ‘meet his needs’ and ‘be in his best interests’, yet her descriptions lacked specific content about the child and what worked or didn’t work in terms of when he saw his mum and dad. During the hearing it was noted that the parents had mild learning difficulties, making the use of formal language and terminology without adequate explanation even more of a concern. Whether more detail was contained in the social work report is unknown, but what was striking about the discussion was how it gave little sense of this boy and his relationship with his parents. Research on birth family contact emphasises the importance of decision-making on a case-by-case basis, looking at the specifics of each and every child and the nature of the relationships they have with their birth family (Schofield *et al.*, 2000; Moyers *et al.*, 2006; MacDonald & McSherry, 2011). Dyke (2023) also argues that institutional language talk like this can be used to mask a lack of knowledge, and that there is a need to be detailed and specific in your language use as well as trying to avoid the use of formal language.

6.1.4 Legal Terminology

This final section on language use turns to a focus on legal terminology. The use of legal terms in a hearing is impossible to completely avoid due to the functions and requirements of the system; however, its use was found to impact on understanding and participation. The problems associated with the use of legal language in hearings have been acknowledged previously, but with limited or no explicit analysis of what this looks like in practice or how this should be addressed (Griffiths and Kandel, 2000a; Kurlus *et al.*, 2016; Hearings System Working Group, 2023).

In this study a number of legal terms were seen to impede communication. One such example was the term ‘relevant person’. A relevant person under the *Children’s Hearings (Scotland) Act 2011* is a legal term that refers to any parent or other person who has obtained parental rights and responsibilities for a child, or any other individual who has been able to demonstrate significant involvement in the upbringing of a child (Norrie, 2022). An individual deemed to be a relevant person has specific legal rights and responsibilities in relation to a hearing which includes a right to be present at a hearing and to receive copies of any reports.

The specificity of the word ‘relevant’ as a legal term resulted in irritation or confusion in some discussions in this study because of how it diverged from its ordinary meaning in the context of the hearings system. In one hearing, a grandmother, caring for her grandchildren on a full-time basis, was told that she was still not deemed to be a ‘relevant’ person and therefore had no right of access to reports about the children. My fieldnotes highlight her response:

The grandmother is told that a previous hearing had decided she was ‘not a relevant person’. The grandmother laughs, closes eyes, puts hands to face pinching nose. The grandmother says, ‘I ask this every time. Every time I am told, let’s see in six months’. She states, ‘I do find it strange when they are living with us and I’m still not relevant’. The reporter says ‘it’s an awkward phrase in the law’. The reporter gives explanation saying a future pre-hearing panel could deem them relevant. Grandmother says, ‘it seems awfully complicated’. Linda says, ‘it is’. The reporter tries to explain further but this still doesn’t seem clear from family’s perspective.

(Contemporaneous fieldnotes, Hearing 14)

While recognising that some of the hearing processes, and decisions made within it, are likely to have contributed to the feelings of frustration this grandmother experienced, legal terminology can be argued to contribute to diminishing this grandmother’s status by making her feel ‘not relevant’ rather than valued and included in the hearing.

In another hearing, Gordon was similarly observed apologising to participants for the phrase ‘relevant person’. He was observed explaining that it was a term he felt uncomfortable using and emphasising that the people present were ‘all relevant’ before attempting to explain why there was a need to consider the term from a legal perspective. Other words such as ‘court’ and ‘sheriff’ also had the potential to cause distress depending on how they were used and explained. On two occasions, parents were observed expressing alarm over discussions regarding the grounds needing to ‘go

to court'. For these parents, the word 'court' appeared to be strongly associated with criminal rather than civil proceedings, highlighting the power of legal terminology and how it could inhibit inclusive practice, as well as potentially exacerbating already high levels of stress and anxiety about the participation process. Ways in which panel members were able to explain some of these terms and processes to mitigate anxiety are discussed further in Section 6.3.

Other panel members found the use of legal terminology problematic. Julie was heard to comment that the term 'relevant person' was 'ridiculous'. Hazel said she understood the importance of prioritising familiar, simple language, but pointed out that the use of some legal terminology was unavoidable. Grounds hearings tended to be particularly challenging in this regard, as Annie's comment shows:

I mean grounds hearings are, very problematic anyway, very, very problematic I think, because the language in which they're phrased is very difficult to read, and also to listen to, you know because it's that sort of legal jargon, and, you're sort of reading the stuff and think who can, who's really understanding it, and then this whole business about you know, you must say whether or not you agree with it, but, it's not clear to the family what that actually means, and then the fact that actually most of the kids the grounds hearing is for will either be absent or too young to under – well, they may be absent if they've been excused or their age requires this thing to be sent to proof anyway, to the sheriff.

(Annie, interview)

These sentiments echo other research findings showing that panel members, while recognising the legal underpinnings of a statement of grounds, find the ways in which these are articulated and supported by statements of fact difficult for participants to understand and at odds with the 'child-centred ethos of the system' (Kurlus *et al.*, 2016, p. 34). Annie's comment also touches on a recurring theme of the exclusionary nature of some language used in hearings; if children and their families do not understand aspects of the process then it is hard to see how they can meaningfully participate. This in turn affects how information is presented in hearings, with implications for the decision-making process.

Despite some of the issues with legal terminology, panel members were also observed

using these kinds of terms when they could arguably have been avoided. In one grounds hearing, a 7-year-old boy left the hearing room while the grounds and statements of fact were being presented to his parents. Once this had been completed, the boy returned. Richard, the panel chair, attempted to explain what had just taken place, telling the boy, 'while you were away your parents reacted to the grounds put forward' and that the panel had decided the grounds were 'sufficiently serious' to send to 'the sheriff'. No further explanation in simpler terms was offered by Richard or any of the other panel members or adult participants, nor was any clarification sought, raising questions about what understanding, if any, this boy had of what had just taken place. This absence of challenge or query in itself is also problematic. It suggests a potential level of acceptance or resignation on the part of a child that there will be parts of a hearing that may not make sense, or that they lack the confidence to seek clarification, both of which pose barriers to participation.

In another hearing, a 16-year-old boy had been charged with criminal offences while still on a compulsory supervision order. In such cases where this has occurred and the child pleads guilty to the offences, a sheriff will typically seek the advice of a children's hearing about options for disposal. This is referred to as the sheriff remitting (sending) the offence to a hearing for advice. In the hearing, the panel chair was heard to say to the participants that the 'sheriff hasn't remitted this [*the young person's offence charges*] to us', to which the boy's mother responded, 'what does that mean?', prompting another panel member to step in to explain. This use of legal language, without explanation, shows how panel members can vary in their ability to simplify their language, and that this can lead to a lack of understanding amongst participants. While on this occasion the parent sought clarification, not every parent or child will have the confidence to do so. It also indicates, notwithstanding the desire of panel members to see children at their hearings, that the ability of some panel members to engage with them requires work, as will be discussed further in Chapter 8.

6.1.5 Legal Processes

Underpinning the ability of panel members to explain legal processes and procedures, and keep legal terminology to a minimum, was how well panel members understood the terms and processes themselves. A recurring example involved the decision-making

involved when a relevant person fails to attend a hearing. In such cases, if panel members want the hearing to go ahead, they have two choices; make a decision to *excuse* the relevant person (under s.74 of the *Children's Hearings (Scotland) Act 2011*), or *proceed in their absence* (under s.75). To excuse a relevant person, panel members must be satisfied it would be unreasonable or unnecessary to require that person to attend, while to proceed in the absence of a relevant person, panel members must decide if reasonable attempts have been made to enable that person to attend and they have instead chosen not to do so (Norrie, 2022).

In this study, panel members sometimes struggled to differentiate between the two options. During their pre-hearing planning ahead of Hearing 39, panel chair Judith was discussing legal options open to the panel when her colleague Pete commented that the parent would need to be excused if she didn't attend. Judith was heard to respond to him, 'or to proceed in her absence', this comment appearing to serve as a gentle reminder to Pete of the legal difference between the two options; it would be unlikely for a parent's attendance to be unreasonable or unnecessary. No further discussion on this took place but in the hearing itself Pete was observed to follow his colleague's lead in making the decision to proceed in the parent's absence.

While in this example the misunderstanding and subsequent correction was made before the hearing, in other situations this occurred in front of participants. The following extract from my fieldnotes illustrate a similar point of confusion in relation to a child's absence. Panel members are not able to *proceed in the absence of* a child; instead, a child can only be excused if certain legal tests are met (under s.73 of the *Children's Hearings (Scotland) Act 2011*). Panel member practice was inconsistent on this point, as the extract illustrates:

Mark: 'first of all we'll just make a decision on the child'

Annie: 'excuse'

Lorna: 'proceed in absence of'

Mark: 'I'll make that *unanimous*'

(Contemporaneous fieldnotes, Hearing 42)

What is shown here is Lorna's mistake in saying she is happy to proceed in the absence of the child, and the panel chair Mark either choosing to ignore the mistake, or not noticing. In the next hearing that afternoon Lorna again demonstrated her lack of

understanding when she said she was 'happy to proceed in the absence of' the child before turning to Annie as the chair and asking, 'excuse?'. Annie similarly ignored this and the hearing continued without further comment. However, on other occasions when confusion amongst panel members on this issue arose, reporters were observed gently prompting them on legal points. In hearing 9, panel members Marion, Josh and Melissa were observed saying they were happy to 'proceed in the absence of' both the child and her parents, leading the reporter to seek clarification by asking 'who are we excusing? who are we proceeding in the absence of?'. This was followed by some hesitation from the panel members suggesting some uncertainty over what they were being asked to clarify. Responses to reporter prompts varied with some panel members appearing grateful for the guidance, others irritated.

While the confusion between these two options is arguably a minor point in the overall process, it is reflective of an enduring theme of inconsistencies in practice amongst panel members on legal issues. Concerns for how legal and procedural aspects of the hearings are managed has long been seen as a side effect of the emphasis on community lay person decision-making (Martin *et al.*, 1981). In this study, confusion over other legal processes, and the presence of reporter prompts in such situations, were not uncommon. As noted in Chapter 3, although reporters should support fair treatment and can express a view on procedural matters in a hearing, panel members are not obliged to accept any guidance (SCRA, 2019b). Although the difficulties discussed here reflect problems understanding legal processes rather than the use of legal terminology, they are connected in that it is difficult for panel members to provide a clear explanation of processes to participants if they are not well understood. Since the inception of the hearings system, the legal framework underpinning the decision-making process has become more complex, belying the apparent simplicity of disposal options available to panel members, as highlighted in Chapter 2. This complexity, and the demands placed on panel members with respect to legal aspects of the process, demonstrate that the ability to explain legal terminology and processes to participants is a challenging exercise but one that is essential to participant understanding.

6.2 Managing a Hearing

Linked to the use of language in hearings and the impact on interaction, findings from this study highlight the importance of how hearings are managed. A children's hearing is a specific type of meeting which involves particular tasks, goals and activities.

Research on meetings suggests that there are a number of generalisable features, such as how chairpersons open and close meetings, how this influences the progression of a meeting (Wodak *et al.*, 2011) and their task-oriented nature (Holmes and Stubbe, 2015).

A panel chair has a particular contribution to make in terms of how meetings are opened and closed, how items are introduced and worked through, how participants are given their 'turn', and how conduct is managed (Angouri and Marra, 2010). Advice provided in the Practice and Procedure Manual acknowledges this role (CHS, 2022a). It outlines the need for introductions and explaining the purpose of the hearing, and provides a checklist to help guide panel chairs with ensuring procedural aspects of the case are covered. It also recognises that some behaviour can be challenging to deal with. How panel members respond to emotions and behaviours, and how this can alleviate or exacerbate a situation, is examined in Chapter 7. First, this section examines the various strategies employed by panel members to chair, explain and guide children and families through the process of a hearing.

6.2.1 Getting Started

The process of managing a hearing can be seen to begin before the actual start of proceedings. As noted in Chapter 4, panel members tended to arrive at the centre around 30 minutes before the scheduled start of the first hearing, and this time between arrival and the session commencing was seen to provide an opportunity for panel members to plan how they would approach each of the hearings. Typically, this might include panel members checking they had understood the recommendations for a child, and clarifying any legal points. Sometimes an informal approach would be agreed whereby different panel members would take on responsibility for different parts of the discussion. Chairs in the room might be rearranged depending on how many people were expected to attend.

While panel members were preparing, upon arrival participants would be directed to a waiting room (or sometimes separate rooms if there was a need to do so) by an

administrator from the reception desk. The administrator would then check the panel members were ready to start and let them know which participants had arrived and if they were still waiting on anyone³⁵. Once ready, the Reporter would enter the room with the participants. With only one exception, where the start of a hearing was delayed slightly to allow a panel member to arrive to cover for a colleague unable to attend, panel members were never late. Despite this, hearings frequently started late; either because of another participant or the reporter being late, or because a previous hearing had overrun.

Panel chairs varied in their style and approach once hearings had started. Some like Theresa presented as nervous and hesitant. Others such as George, Liz and Judith came across as relaxed and confident in their interactions. Different approaches were taken in how panel chairs opened a hearing. While all panel chairs were observed stating the purpose of the hearing, only some offered additional explanation or clarification. For example, in hearing 3, George not only stated the purpose of the hearing – to review an interim Compulsory Supervision Order - but also explained how this differed from a full hearing and reminded participants that the discussion could only concentrate on what was relevant for interim emergency measures, not all aspects of the child’s situation. Similarly in Hearing 58, Richard set out the type of hearing and the reason for it, before adding that the hearing had two tasks to deal with, and that these would be dealt with separately; firstly, whether there was a need to continue the compulsory supervision order and then secondly, to discuss the permanence advice to the sheriff. These additional explanations functioned to increase clarity about the process and avoided assuming participants were familiar with the process.

Another strategy employed by some panel members to help prepare participants involved incorporating an informal type of agenda-setting. Henry did this by using phrases such as ‘I think the things we need to talk about are...’ before setting out the key issues. Some panel members reflected in their interviews on how they would use agenda-setting to manage expectations around participation and reassure participants they would each be given an opportunity to speak, as described here by Anthony:

Right, we’ve got to hear from everybody here today, and we’re going to hear from

³⁵ (or very occasionally the Reporter e.g. H1 to speak to the panel members about a safety issue regarding a family member)

everybody, so you'll have your say, and they'll have their say, and then they'll have their say, nae interrupting because we need to hear from everybody.

Anthony (interview)

Mary gave a similar account:

And sometimes I will give the recommendation early on, when I'm giving the kind of agenda, I'll sometimes say now the recommendation today is, so and so and so and so, but we'll talk about it and we'll hear from everybody.

Mary (interview)

Providing additional explanation regarding the purpose of the hearing, how it would unfold, what would be discussed, and emphasising that everyone would get the opportunity to speak helped increase participants understanding and arguably could be seen to provide a level of emotional containment from the outset. Approach was also key; Mary's style was warm and gentle, while Anthony was more directive, but each could be said to convey a 'good authority', the ability to balance being empathic with being authoritative (Ferguson, 2011).

6.2.2 Guiding and Explaining

For many panel members, this explanatory approach was mostly emphasised at the start of a hearing. A noticeable few, however, employed this style consistently throughout. Benefits were most clearly seen in grounds hearings. Grounds hearings are particularly procedurally driven and legalistic *yet also* tend to be the first experience for children and families of the Children's Hearings system. In a grounds hearing panel members have to determine if one or more of the section 67 grounds of the 2011 Act applies, and whether the hearing should go on to consider the need for legal measures (Norrie, 2022). Panel chairs are required by law to read out the referral ground(s) and supporting facts. The chairs can provide an explanation of each statement, but are otherwise expected to read out the ground(s) and supporting facts verbatim. This limits their ability to temper the impact of these statements. Nor can the child or parents enter into a discussion about the grounds and facts at this stage; all they should do is give a yes or no answer regardless of whether they wish to explain or provide context to any of the information. For these reasons, grounds hearings can be a daunting and upsetting

experience for children and families therefore it is crucial they are managed well.

Some panel members such as Liz were particularly skilled at ensuring each step of the process of a grounds hearing was clearly explained. I observed her chair two grounds hearings a week apart. In the first, the children aged six and nine did not attend, but their mother and father were present. They appeared unsure and nervous. Liz did not rush them; instead, she carefully explained why the hearing had been arranged and how it would proceed, and provided the parents with guidance at every point. This support came in the form of small actions which, over the course of the hearing, provided a high level of support, such as drawing their attention to a physical copy of the grounds and supporting facts saying gently to the parents, 'you've got these in front of you' and 'you can follow this' as she explained how she would go through each of them to ask whether they accepted or denied these. In the second grounds hearing, Liz was again observed providing a step-by-step summary of how the meeting would progress. This included telling the parents exactly how the process of presenting the grounds to them would work - 'I'll read out the ground first, then the supporting facts, then I'll come back to the ground' - as well as encouraging the parents to seek clarification at any point - 'if there's anything you don't understand, just stop me'.

Being able to ensure all necessary procedural and legal requirements of the hearing were addressed and explaining terms and processes clearly while also maintaining a level of informality was skilled work. Liz's ability to recognise how parents might be feeling and offer a high level of explanation throughout the process arguably helped provide an essential level of emotional containment and support which helped allay anxiety and maximise participation. Other panel members such as Judith and Dawn were also observed managing hearings in a similar fashion, rarely hesitating or seeming unsure of themselves while maintaining a level of informality and ease which appeared to help relax and reassure participants.

There was explicit recognition amongst panel members that this was a crucial part of chairing hearings. Vicky felt that the key to being an effective panel member was being 'relaxed, and quite informal, without being patronising', and that there was a way to 'dot the i's and cross the t's in terms of the legal proceedings' without it sounding 'particularly scary'. She said simplifying her language use was essential and gave examples of how this could be done:

You can say, I've got a bit of housekeeping here to do, we need to check that you've had the papers, eh, have you read the papers.

(Vicky, interview)

This process of informal signposting and 'softening' of the legal processes was observed across different hearings. For Liz, it was in the use of phrases such as, 'now that's an awful lot of words but basically it means...' and 'the next thing we need to decide is...whether we need to have any interim measures... what that means is... so we'll have a chat...'. For Judith it was the 'legal bits and pieces' she needed to go through before discussions could begin while for Amanda it was the phrase, 'and now some legal things'. Kenny was observed explaining that the process of reviewing a CSO as well as providing advice to a sheriff would take place in two parts, adding 'we've got two decisions to make, we will do them separately', while Kathleen ensured she gave a simple explanation of the role of a safeguarder³⁶ before discussing if one was needed. Sometimes panel members also managed to incorporate humour into these explanations. In one hearing, when Judith was explaining to participants about the need to consider if a safeguarder was required she addressed the 13-year-old boy specifically, asking if he knew what a safeguarder was. When he said yes, she joked with him saying, 'I'm going to test you', to which he laughed. She went on to give a simple, clear description of the role before asking her colleagues if they felt one was required. These small actions were powerful in creating a more relaxed atmosphere, helping participants know what was coming next, and acting as a counterbalance to the legalistic aspects of hearings.

When legal processes weren't clearly explained in the ways outlined above, a greater risk of confusion or challenge appeared to occur. In a grounds hearing, despite using clear language, Christine did not remind a mother that there could be no discussion of the facts as they were read out. When the mother started disputing these as they were read out, Christine had to remind her, 'you don't need to justify if you don't agree', with the Reporter also stepping in to further clarify the procedures around disagreement. In not setting out the procedures and expectations in another grounds hearing Richard

³⁶ A safeguarder's role is to provide an independent consideration of the assessment and plans for a child, and their appointment must be considered at every children's hearing (Norrie, 2022). Safeguarders are often appointed by panel members if aspects of the child's assessment and plan are contested.

also experienced parents attempting to discuss the grounds rather than simply agree or disagree.

It is recognised that explaining and guiding participants cannot guarantee misunderstanding or confusion will be eliminated. There was evidence in hearings of misunderstandings still occurring even when terminology and processes appeared to have been comprehensively outlined. For example, in hearing 44, despite careful chairing by Liz, confusion amongst the parents was still evident. After the panel had reached a unanimous decision to send grounds to the sheriff for proof, even though the parents had not disagreed with them, due to the age and absence of the children, the children's mother immediately asked 'what does this mean? does this mean my kids will be removed?' (the children were still in their parents' care) while the children's father was observed asking, 'what's a supervision order?'. This confusion suggests that preparation and support before as well as during a hearing, is essential, a view also voiced by some panel members, particularly with respect to grounds hearings.

Overall, these examples serve as a reminder of how daunting hearings can be for children and their families and that while full understanding may still be a problem, support in the form of verbal scaffolding of the processes and terminology appears to help increase understanding and participation. Research has shown that strong communication skills are especially important in engaging with parents with learning difficulties in hearings (McGhee and Hunter, 2011). I argue that the findings in this section not only suggest what these communication skills may look like in practice, but that this kind of support is essential for all participants. Explanations and guidance appeared to be important and effective in helping children and parents through the decision-making process.

6.2.3 Impact of Virtual Hearings

In 2020, hearings were forced to move online because of the Covid-19 pandemic. This was a challenging time, with each of the six panel members interviewed in 2021 describing significant frustrations with Vscene, the video-conferencing software initially used by SCRA to run the virtual hearings. Jennifer talked about how she would often start a hearing then end up being disconnected and having to rejoin the meeting by phone. She said it was extremely difficult to then continue to chair hearings when she

couldn't see anyone on screen. Ross shared similar frustrations. All of the panel members interviewed at this time questioned why it took SCRA over a year to fully make the switch to Microsoft Teams. The paper by Nixon and colleagues at SCRA acknowledged that this software was difficult to use but did not provide a rationale of why they continued to use it for such a long period (Nixon *et al.*, 2023). The panel members described the move to Microsoft Teams as a big improvement but there were still mixed feelings about the impact of virtual hearings on the decision-making process.

Alex, George and Ross felt that virtual hearings were helpful in offering some professionals such as headteachers, health visitors and contact centre workers the opportunity to join for part of the hearing and give their contribution without the need to stay for the entire hearing. However, Alex also raised concerns about some of the difficulties facing children and their families in being able to participate fully in the online hearings, echoing research which highlighted the impact of virtual hearings on children's rights (Porter *et al.*, 2021).

In terms of being able to manage hearings, Ross said that he found the virtual hearings to be 'more orderly' and that there was better 'turn-taking', but he was alone in this view. George and Alex said that the virtual hearings placed an increased burden on panel chairs to do most of the work in managing proceedings online as it was less easy to share responsibilities. George said he found it more difficult to maintain a clear focus and agenda, while Alex said he felt interactions could be more 'volatile' online because it was 'easier' to say antagonistic things from a (virtual) distance.

The main difficulty acknowledged by all six panel members interviewed in 2021 was the impact of not having face-to-face interaction. Not being able to access non-verbal communication was described as a real loss. George described the information that could be gained from watching the interaction between child and parent and said in virtual meetings it wasn't possible to pick up these 'intimacies and nuances', 'it's much more cold and analytical'. George and Alex said it was harder to manage hearings. George described not being able to 'read the room' online and gauge how people were feeling. He described how important it was to pick upon being able to see 'agitation, maybe the feet start to swing or the toes start to tap' and be able to respond to this change in emotion, but that this wasn't possible online. This view was echoed by both Alex, who said that virtual hearings ultimately offered 'less information' because of the

loss of 'body language and non-verbal communication', and Cheryl who said she missed face-to-face hearings because 'you can see the body language much better'. These views serve to highlight the relational aspects of hearings and the importance of responding sensitively to non-verbal as well as verbal communication. This is discussed further in Chapter 7.

6.3 Addressing Participants

We have already seen how the language use of panel members, and the level of explanation and guidance they offer children and families, can vary, and that this has the potential to differentially shape participants' experiences of the hearings process. This chapter now turns to another aspect of the interactional process: how participants were addressed by panel members across hearings. Linguistics research suggests how people talk in interaction has implications for how self, identity and social structures are recognised and produced (Heritage, 2001), and that how a person is referenced in interaction is fundamental to the navigation of social relations (Stivers *et al.*, 2007).

In this study, panel members varied in how they addressed children, their family members, and professionals. While most used the first names of children and their families to refer to them directly at the start of a hearing, fewer continued to do so throughout the discussion. It was also less common to hear panel members use the first names of other participants such as the social worker or other professionals.

Occasionally, a panel member would forget or make a mistake with a name, such as in hearing 60 when Richard couldn't remember the name of one of the siblings the hearing was being held for and his colleague Christine had to remind him, or in another hearing where Denise was corrected after calling the child's paternal grandmother by the wrong name.

Panel members such as Mary and Liz stood out in how they used participants' names throughout the hearing when addressing them. This helped convey a sense of interest in, knowledge of, and respect for participants. In contrast, several panel members were observed relying on the use of kin titles rather than individual names once hearings were underway. This included Denise in hearing 46 who turned to the child's parent and asked, 'mum, what does the CSO [Compulsory Supervision Order] mean to you?' and Melissa in Hearing 63, who told a parent, 'I think, mum, you need to let this support

happen'. Similarly, Richard in hearing 56, in which a 7-year-old child and both parents were present, was observed directing his first question about contact to the social worker, asking her, 'how about contact with mum?'

There was recognition that this was something that should be avoided. Ahead of hearing 36 in a discussion between the panel members regarding the pronunciation of what Julie described as 'foreign origin' names, she stated, 'I know we're told not to [use 'dad'], but sometimes I can't hear what people are saying [when they pronounce their names]'.³⁷ She was gently challenged on this by Gordon who asked her to imagine if he used the word 'wife' instead of his wife's name when addressing her. Terms of address and reference in conversations serve a variety of relational purposes, including conveying politeness, personal feelings, intimacy, power, solidarity or distance (Kluge and Moyna, 2019). It is difficult to see how addressing a parent by a category name such as 'mum' or 'dad' rather than one's actual name can communicate anything other than disregard and an inequity of power in a discussion, particularly given the decisions being made in a hearing.

6.3.1 Pronoun Use

The use of second and third-person pronouns in addressing participants also varied across hearings. In the English language, second-person pronouns are represented by variations of the word *you*, while third-person pronouns include *he, she or they*. The use of second-person pronouns has a key purpose in signalling attentional focus, encouraging involvement in a conversation (Packard and Berger, 2020), while third-person pronouns such as *he, she or they*, can have a distancing effect and serve to discourage interaction because they render the individual a passive observer rather than active participant, even if the conversation is positive (Koprowska, 2021).

The impact of differences in pronoun use was highlighted in a hearing for a 16-year-old boy in which questions directed towards him by panel members were answered only minimally. Appearing irritated by the young person's demeanour and lack of

³⁷ The Practice and Procedure Manual is clear on this issue: 'It should be evident from introductions how attendees wish to be addressed, for example 'Mark' or 'Mr Thomas'. It is not acceptable to refer to attendees as 'mum', 'dad' or 'social work'. If unsure, ask.' (CHS, 2022a, p.49)

engagement, Denise's response was to refer to him in the third person saying he couldn't 'pick and choose' who he talked to. She and her colleague Donald went on to make further references to the young person in the third person, and at one point, when support options were being discussed, Denise questioned whether this should continue to be offered, stating, 'this sounds great but if *he's* saying *he's* not going to give up his friends...'. In contrast, when the third panel member, Joan gently persisted in encouraging the young person to give a view, addressing him directly by name and using the pronoun 'you', he did respond.

The use of the second or third person also varied when panel members were giving their decisions. In a hearing for a 2-year-old boy, in which the child's mother was present, Josh delivered his decision to the room using the phrase 'his mother's address' when giving his decision. In contrast, Josh's colleague Christine directed her decision directly at the boy's mother stating, '[boy's name] will stay at *your* address'. These practices of referring in the third-person to someone who is present in the room has been recognised in other research as making participants feel excluded. A study by Cook (2015), commissioned by the Centre for Youth and Criminal Justice in Scotland, sought the views of groups of young people on youth justice policy and practice. Some of those with experience of children's hearings described being made to feel excluded from the decision-making process, with one young person quoted as saying: 'well, I was in this panel and there were just three of them sat there judging me, talking about who I was and what would happen to me as if I wasn't even there' (Cook, 2015, p. 11).

Third-person discussions about individuals present in the hearing also appeared to occur as a result of institutional practices. In this study, interactions were typically led by panel members asking professionals for their views on a child or parent rather than the hearing being the 'big discussion' described by Children's Hearings Scotland (CHS, 2024). This approach of panel members leading with their questions and participants replying tended to encourage discussion about individuals in the third person. On some occasions direct conversation was actively discouraged, as illustrated in hearing 29 when a parent, whose children were being looked after by foster carers, gave her view on an issue. When she had finished, the foster carer's social worker sought to respond by turning to the parent and providing evidence which challenged the veracity of the mother's claim, but at this, the panel chair Amanda immediately interrupted and

rebuked the social worker, saying, 'it's up to us to ask questions'. While recognising the potential for this conversation to escalate tensions because of the direct challenge to the parent, and the role that panel members have in managing the dynamics of the meeting, this participation structure of engagement involving question-answer sequences led by panel members was reflective of most hearings, with direct and open conversation tending not to be encouraged (Koprowska, 2021). This points to tensions between the stated aspirations of enabling children and their families to participate equally, and the everyday practices of panel members in managing hearings. It is not known whether the change in room setup to a more circular grouping of chairs since fieldwork took place has resulted in any changes to this interactional style which tends to discourage unprompted dialogue.

6.3.2 Orienting to Participants

In managing hearings, panel members were also required to make decisions regarding the order in which individuals were invited to contribute. If children and young people were present, panel members had different preferences and strategies for how they spoke to them, such as asking if they could speak to the child alone. Direct engagement with children and young people is explored in Chapter 8. However, given children and young people were only present in under a third of hearings in this study, panel members more frequently had choices to make in terms of which adult they addressed first. In most cases, panel members began a hearing by asking the social worker to speak first. Exceptions to this were rare, and stood out, for example in hearing 27 involving a one-month-old baby, Dawn started by asking the child's mother the first question.

It is not clear how deliberate an action it was for panel members to begin the discussion by speaking with social workers. Some of them indicated that speaking to the social worker first was a strategy aimed at supporting parents, based on the view that it was kinder to avoid asking them to speak first when they might be feeling very stressed. This role in emotion regulation is discussed further in Chapter 8. There was some acknowledgement by panel members that involving the parent in the discussion from the start communicated the parent's importance in the proceedings, but only on one occasion was the reason for not doing so explicitly acknowledged with a parent. Panel

chair Roy was observed managing this skilfully in a hearing when he directly acknowledged the child's mother first but then explained he was going to start with the social worker to go first because the hearing had been called by her. This small act arguably served to maintain rather than downgrade the parent's status in the hearing in ways that other hearings which began with the update from a social worker did not.

The use of eye contact and bodily orientation in acknowledging and addressing participants also varied across different hearings. When asked by a panel member to share her views on contact between a parent and his children, a contact worker in hearing 7 was observed to turn and address some of her statement directly to the child's father. She maintained eye contact with the father and used first person pronouns while giving her opinion. In this same hearing the foster carer also addressed the parents directly, directing her gaze towards them and maintaining eye contact as she shared her views. Orienting to the parents directly rather than replying to the panel member who had asked the question can be seen to communicate respect for the parent and encourage involvement in the proceedings. These actions also show how participants can gently resist aspects of the question-response structure of panel members in ways that are more respectful to children and families while avoiding any breach of expectations about participation.

Not all engagement could be described in this way, however. Amongst panel members, differences in gaze and orientation were apparent, and these were often most striking when decisions were being delivered at the end of a hearing. In hearing 60, Christine was notably the only one of the three panel members to address and look directly at both parents when giving her decision, with Richard and Cora both directing their gaze and decisions instead towards the social worker. Similarly, in hearing 31, Liz was observed to address the parents directly, using second person pronouns and maintaining eye contact with them, while her colleague Bruce avoided looking at the family while giving his decision and instead directed his decisions towards the social worker, talking about the family in the third person.

Various interpretations can be offered for these differences in approach. There needs to be recognition that some of these decisions were not easy to deliver: in Richard, Cora and Christine's case, permanence for the children was being recommended and they had to confirm this with the parents. It could be argued that the avoidance of eye

contact reflected a way of managing the emotional labour of the task. Panel members may see it as a useful strategy on occasion to direct questions and decisions towards 'safer' eyes in the room if they are fearful that initiating or maintaining eye contact may risk inflaming a situation. These issues involving emotions are explored further in the following chapter. Children and parents may also wish to avoid eye contact.

Nonetheless, these decisions involve the lives of children, young people and their families therefore it is hard to see how anyone else should be the focus of the panel member's gaze when the decisions are being delivered. In doing so it arguably downgrades the status of children and families in proceedings, rendering them as the audience rather than the central figures in the discussion (Koprowska, 2021).

6.4 Conclusion

This chapter has focused on the face-to-face interaction between participants in children's hearings and what implications these interactions have for the decision-making process. It has identified issues relating to language use and how panel members varied in their ability and awareness to moderate or adapt their language appropriately to hearing discussions. The use of formal language, jargon, avoidable legal terminology and even stigmatising language was evident in the hearings observed in this study, despite research involving children and parents with experience of the hearings system showing that language use in hearings could be complex and difficult to understand, and that they wanted this to be avoided (McGhee and Hunter, 2011; Cook, 2015; Kurlus *et al.*, 2016; Children's Hearings Working Group, 2023). These aspects of language use, alongside some of the unavoidable legal jargon of hearings, contributed to a lack of understanding amongst some participants about the processes and discussions taking place, and were particularly evident when discussing birth family contact and when decisions were being delivered.

Panel members' own lack of understanding of legal terminology and processes could be seen to contribute to a lack of clarity in proceedings. The legislative framework underpinning the Children's Hearings system has become significantly more complex since its inception but the basic structure of decision-making has not, arguably creating greater challenges for panel members in both understanding and helping others understand, legal terminology and processes (Woods *et al.*, 2018). Ultimately, these

barriers to understanding have implications for the decision-making process: meaningful participation cannot occur and good decisions cannot be made in environments where children and families are not able to follow what is being discussed.

What also became apparent in this study was how panel members, particularly panel chairs, were able to mitigate against some of the challenges which arose through the aspects of language use described above in the ways that they managed meetings, some in particularly skilful ways. Their ability to explain and guide children and their families through the complex and often stressful process of a hearing, particularly with respect to grounds hearings, the delivery of decisions, and discussions around contact, was key to supporting understanding and participation of the decision-making process. How panel chairs opened hearings, set an informal agenda, sought to pre-empt certain challenges involving contested information by reassuring all participants they would have an opportunity to speak, explained words and procedures, and guided children and families through the process of a hearing was seen to vary considerably. While conclusions drawn about the ways in which these features influenced the progression of a hearing can only be made tentatively, the findings from this study concur with wider research which shows how the ways in which discussions are managed and how individuals are supported to participate, influences the progression of meetings (Angouri and Marra, 2010; Wodak *et al.*, 2011). When panel chairs were confident and thoughtful in their approach in the ways outlined above, there appeared to be a lower risk of confusion amongst participants.

The final section of this chapter narrowed in focus to examine a specific feature of interaction, how participants in a hearing were addressed. The way panel members oriented to service users (or not), whether their name, or kin titles were used, whether second or third person pronouns were employed, and in what order they were brought into the conversation in a hearing served in different ways to invite or discourage participation. These findings are consistent with research which argues for the importance of how a person is referenced in interaction (Stivers *et al.*, 2007; Kluge and Moyna, 2019; Packard and Berger, 2020; Koprowska, 2021), and speak to contradictions in the role of panel members in supporting effective participation and placing children and their families at the centre of discussions.

This chapter has demonstrated the complexity of interactional processes in children's hearings. Supporting the involvement of children and parents in the decision-making process is not straightforward. The presence of children and families in a hearing does not mean they are 'included'. Discursive and interactional practices can both support and discourage engagement and participation. Differences in linguistic abilities, alongside other micro-level discursive strategies serve a variety of relational functions which can either include or alienate children and families from participating meaningfully in the decision-making process, and within these interactions, power imbalances and judgement are evident.

7 Feeling

What I think you don't appreciate, is, how emotionally draining it is. I mean, you know there's a certain amount of training, it was different training to what it is now, when I started, but, there was training and you knew it was going to be a regular training, and you knew, you know, you were going, it wasn't always going to be easy and so on, but there are times you know, you really, it's the emotions that are there, and then obviously, you know, you're not sharing the emotions of the people, but, because you're dealing with them, it's very much an emotional, an emotional job. And I hadn't, hadn't appreciated how much that side of it was.

(Mark, interview)

This response from Mark to my introductory interview question, asking him about his experience of sitting on children's panels in the seven years he had been in the role, and how that compared to his initial expectations, introduces the second key theme of this research; the centrality of emotion as a feature of children's hearings. Until now there has been little exploration of the role of emotion in panel member decision-making. Early observational research acknowledged the variations in emotional expression amongst panel members, children and their parents but did not identify this had any strong impact on the level of participation amongst participants, although they found that sensitive topics were less likely to be broached in hearings (Martin *et al.*, 1981). More recently, studies have touched on or acknowledged the impact of emotion on panel member decision-making either from the perspective of social workers and professionals (Kurlus *et al.*, 2016; Hill *et al.*, 2017), or as part of a larger overview of the permanence process (Whincup *et al.*, 2019).

The chapter consists of three sections. It begins by looking at how emotions were described by panel members or observed in hearings. Next, it discusses aspects of the decision-making process identified by panel members as being areas of particular challenge. It ends by exploring the ways in which panel members managed their own emotions and the emotions of others. In doing so, it argues that the role of emotion, previously a neglected area of research in decision-making (Maroney, 2016; Bergman Blix and Wettergren, 2018; Whincup *et al.*, 2019), is an important aspect of children's

hearings and should be acknowledged and scrutinised with respect to panel member decision-making.

7.1 Expressing and Describing Emotion

This section looks at how emotion was expressed by participants in the hearing room. Not only can hearings be a highly emotional environment for children and families, but panel members may also experience a range of emotions. The focus here is predominantly on negative emotions, for two reasons. Firstly, because these types of emotion were more prevalent, and secondly because difficult emotions typically place greater cognitive demands on an individual in terms of emotion regulation (Hochschild, 1983; Gross, 1998) with resulting implications for decision-making.

7.1.1 Emotional Expression During a Hearing

Emotional reactions in hearings were not an unusual occurrence in this study, particularly amongst children and families. Sometimes, positive stories about a child thriving in a new school or having fun with grandparents would be shared. A joke between a young person and panel members might be exchanged, bringing some lightness to proceedings. But, much more frequent were the presence of negative emotions, in which children were observed clinging to parents or alternatively seemed determined to avoid interaction, and teenagers bowed their heads and stared at the floor in silence, or mumbled or raised a voice in disagreement with something being said. Parents were observed sobbing, shouting, chewing their lips anxiously, or simply struggling to speak. One father's leg shook uncontrollably. Another parent walked out of a room, upset because of the particulars of a discussion taking place. Others looked down and avoided eye contact while listening to descriptions of how upset their child became in their presence. Some started to cry, or sat quietly with flushed faces, as they were told they would see their child less, or not at all. A tearful father was observed, voice wavering, telling panel members, 'I stopped drugs, methadone, moved away to get my kids back', as plans for long-term alternative care for his children and no face-to-face contact were discussed and confirmed, while a mother's entire body shook as she swore

at other participants and threatened the social worker as permanence plans for her child were discussed.

Sometimes negative emotion seemed to fill and subdue the entire room. At other times there was a mix of feelings, with positive updates given of how well a child was doing living away from home sitting in stark contrast to the grief of a parent having to hear this. These examples included a father rubbing his hands and looking down at the floor, avoiding all eye contact while a foster carer talked about his child being able to look at photos of him and cards from him contained in a memory box, face-to-face contact having long since ceased; a mother who sat crying as she heard how her baby was 'thriving' with the foster carer; and a social worker who shared cheery anecdotes about a recent caravan trip a child had taken with her foster carer while the child's mother sat motionless, staring ahead.

Signs of emotional experience amongst panel members, although less visible in frequency and intensity, also occurred. Sometimes this was simply avoidance of eye contact in a difficult moment, such as in hearing 26 where, as Lisa read out the grounds and supporting facts for a hearing for a four-year-old boy, the others in the room were observed to look down and avoid each other's gaze:

Room felt sad. Mum agreed with pretty much everything. I look at the other panel members and participants – everyone looking down and avoiding eye contact.

(Contemporaneous fieldnotes, Hearing 26)

Sometimes it was a raised voice in response to an angry parent, such as Melissa in hearing 65 or signs of irritation at a teenager, like with Denise in hearing 46.

Certain aspects of hearings, such as delivering difficult decisions, could be particularly challenging for panel members, as is discussed further in Section 7.2. In one hearing involving the temporary cessation of contact between the children and their parents, the distress of the parents was clearly visible. Both were crying and physically shaking as the decision was delivered. While two of the panel members, Amanda and Murray, displayed no outward signs of emotion, Dawn's voice could be heard to waver as she gave her decision and reasons. Afterwards, Amanda's first comment was, 'oh my goodness, tough hearing'. Murray concurred, saying it had been 'emotionally draining'.

Similar observations occurred in another hearing at a point where the second panel member made what turned out to be the majority decision regarding cessation of contact between parents and their child:

Ross: gives decisions and reasons for ICSO, for non-disclosure. I think I hear his voice waver. Says: finally we come to contact. Pauses. Says: I don't want the baby to have any more distress and trauma so I make the decision to terminate contact. Voice wavers again.

(Contemporaneous fieldnotes, Hearing 55)

In contrast to the much more visible signs of emotion in children and parents, a wavering voice was one of the few obvious markers in panel members that emotion may be present. The prosody, or melody of speech is a well-established marker of emotion even when moderated by factors such as age or sex or culture, which explains why emotion can be identified in others even when they are speaking in different languages not known to us (Flam and Kleres, 2015).

Other panel members also talked about occasions when they had previously expressed emotion during proceedings. During a conversation between Kathleen, Melissa and Josh, each panel member recounted having previously cried in hearings; Kathleen because 'it was such a positive outcome', Melissa 'at the positive ones', and Josh in his 'first one' [hearing]. Melissa said she felt it was 'okay to show your emotions'. This conversation stood out in that it was unusual to hear panel members to recount, or state, a willingness to express emotion in a hearing. Melissa's comment about only crying at 'the positive ones' is telling in it suggests she views these kinds of emotions as acceptable to show in a hearing, but not ones that are perhaps more negative. Indeed, despite the high prevalence of hearings which challenged panel members emotionally, as will be seen throughout this chapter, I did not observe a single panel member appear tearful. In general, panel members appeared to try hard to keep displays of negative feelings to a minimum in a hearing, suggesting that feeling rules play a key part in determining which emotional reactions are acceptable to show in a hearing, and which should be hidden (Goffman, 1959; Hochschild, 1983).

Even though panel members in general appeared to try hard to avoid showing any visible signs of their own emotion in a hearing, it was not uncommon for them to acknowledge their feelings verbally. In the same hearing that Ross's voice could be heard wavering, Elaine was observed telling the parents that even in all her years of

experience in the role, the decision she was being asked to make was far from easy, while her colleague George also added after delivering his decision that he 'had never seen anything like this in terms of the emotion' around the recommendation to terminate contact. Naming emotions in this way (as opposed to showing emotion) was powerful within the context of this hearing. Research has shown that naming an emotion can be an effective way of reducing emotional arousal (Torre and Lieberman, 2018). In this study, it appeared to serve two functions: demonstrating an attunement to, and recognition of, the parents' feelings at that moment, and also arguably allowing an acceptable outlet for, or lessening the burden of, the emotion in the panel members themselves.

7.1.2 Reflections on Emotional Experiences After a Hearing

While overt displays of emotion by panel members were rare, acknowledgement of feelings either before or after a hearing was more common. Occasionally the reflections could be positive in nature, such as in hearing 67 when panel members heard how well a 16-year-old was doing and had commented afterwards on both how great this was to see and how lovely the social worker was. More frequently, panel members tended to acknowledge emotional experience when it had been challenging for them. Whether this simply mirrored the greater number of challenging hearings that occurred, or a stronger desire to reflect on difficult emotions, was unclear, but it was regularly reflected in interactions between panel members after a hearing had ended, even if only in short comments such as: 'that was really difficult' (Joe, after a hearing where restrictions on birth family contact were continued); 'that was hard' (Christine, after agreeing to a recommendation for permanence to two children in front of both parents); and 'oh my goodness, tough hearing' (Amanda, after a hearing where two parents had been very upset). Other comments more explicitly addressed the emotional impact on panel members. Mark and Donald separately spoke about hearings they'd just participated in as being 'emotionally draining' while George, recounting a hearing he'd had to deal with the day before when acting as a last-minute stand-in for a colleague, said 'my head's mince after yesterday'. Meanwhile, Mary described feeling 'emotionally shattered' and 'exhausted' after a five-hour session involving three different hearings she had just completed.

Feelings of sadness were not uncommon. In his interview, Donald said, 'sometimes you feel sort of, you know, very sad for people, that you can see that there is just nothing that you can do for them', while Yvonne was heard to remark one day to colleagues 'this one feels a bit flat', following a hearing where permanence plans had been recommended, and contact between child and parent had ceased. At other times, even if there was no verbal acknowledgement between panel members after a hearing, a shift in mood would suggest these feelings were present, with panel members presenting as quieter or more subdued than they had been beforehand. Sometimes, stronger feelings of censure were communicated. Ahead of one hearing, Julie was heard to condemn the child's father for what she described as, sitting on the mother while she was pregnant. After another, Melissa was observed discussing with Marion the domestic abuse which had been detailed in the statement of facts, commenting that the violence had been 'inexcusable'. These reactions served not only as a reminder of the harrowing nature of the lives of some children and their families, but of the challenges the decision-making task posed for these volunteer panel members.

While sadness was a more openly acknowledged emotion, experiences of stress or fear were often talked about in a more indirect way. After one hearing where a child's mother had been upset and angry, which had involved her shouting at people and at one point verbally threatening the social worker, Josh commented to his colleagues that his heart had been 'pounding' in the room. His colleague Melissa, responded by making reference to her own increased heart rate, telling him she'd felt similarly. On another occasion, Claire, a recently-qualified panel member, shared a memory of how her 'heart was pounding' when things had 'kicked off' in one of her first hearings, due to an upset response from a parent.

A rapid heartbeat is a feeling in the body commonly associated with feeling fear or anxiety, referred to in neuropsychology as a somatic marker (Damasio, 2009). What is interesting is that in the conversation between Josh and Melissa, and separately with Claire, they only described their feelings with respect to the physiological changes they had experienced, despite there being a significant number of words in the English language which could potentially capture this such as feeling fearful, unnerved, afraid or uneasy. It may have been that they were not able to give a more precise definition, or it

may have required a level of vulnerability in admitting the nature of their feelings that they were reluctant to demonstrate.

There was, however, more explicit acknowledgement of anxiety or nervousness as an anticipatory emotion, with panel members more openly referring to feeling nervous before a hearing, or acknowledging afterwards that they had been 'quite anxious' (Claire, Julie, Mark). Mark attributed this in part to the unpredictable nature of hearings:

The training and everything's great, and it gets you to that point, where you feel comfortable, or as comfortable as you can be with your knowledge, but I think nothing prepares you for actually for sitting in front of people. And I still you know, to this day, I still say even to new panel members, I still get butterflies in my stomach, when I'm sat there and you know they're about to walk in through the door, because you just don't know what's about to appear, and you can prep all you like, and the prepping is very important, but depending on what walks through that door, and what they've got to bring that day, you know, so I think in some ways it is kind of what I expected, but in other ways no, you can never truly just know what you're going to be [dealing with].

(Mark, interview)

Mark's comments here echo the reflections from Joe in the last chapter. Both praised the initial training, as did other panel members in this study. However, in different ways they were recognising the very specific experiential challenges of being a panel member that go beyond a knowledge of the processes and procedures of a hearing. For Joe it was about being able to deliver decisions as well as possible in front of children and families. For Mark, it was a wider comment on the dynamic, relational nature of hearings. Mark was an experienced, confident panel member so the value of him acknowledging his emotions to other panel members, particularly newly-qualified ones, is likely to have been valuable.

There was also a strong feeling amongst other panel members of the importance of recognising the emotional nature of the role. Melissa was observed telling a newly-qualified colleague one day that 'you get used to the nerves the more you do' but that 'you *should* feel some nerves, these are people's lives'. In Helen's view, no amount of training could prepare panel members for the emotional impact of hearing about the

challenges facing children and their families and the decisions that needed to be made, but that these feelings were necessary to make good decisions. She argued that ultimately it wouldn't 'help the children if you were sitting there and didn't feel emotion'. For Melissa and Helen, emotional experience was not something to be denied, but rather it formed an integral part of the decision-making process in guiding what should be attended to and valued.

7.2 Emotional Experience: Areas of Particular Challenge

Alongside recognition of the emotional nature of the decision-making process, panel members also identified particular aspects of it which could contribute to, or exacerbate, emotional experience. This section discusses three key areas of challenge, involving type of hearing, duration of a hearing session, and decision-making in relation to birth family contact.

7.2.1 Types of Hearings

Panel members deal with different types of hearings, and each hearing may have more than one purpose. As discussed in Chapter 2, the most common reason to hold a hearing is to review a Compulsory Supervision Order (SCRA, 2023a). Another type of hearing is a pre-hearing panel. This is typically a much shorter type of hearing, rarely attended by social workers or relevant persons (although permitted) and held only to determine any procedural matters such as whether to excuse a child from attending an upcoming hearing; no issues of substance should be discussed. Panel members may also be asked to consider permanency-adoption advice, or to review a Child Protection Order (CPO) granted by a sheriff at a 'second working day hearing'.³⁸ This list is not exhaustive but gives a flavour of the different types of hearings and objectives which may be involved.

While panel members identified areas of difficulty across a number of different hearing types, grounds hearings were repeatedly found to be a particular challenge in terms of the emotional labour involved. For most children and families, a grounds hearing is their first experience of the children's hearings system, and for a number of reasons this

³⁸ As the name suggests, a children's hearing must take place on the second working day after a CPO has been implemented, and the purpose of the hearing is to decide if the CPO should be continued, and if yes, a further hearing to review the CPO will be held the eighth working day

can be daunting. As noted in the previous chapter (Section 6.2.2), in a grounds hearing panel members have to determine if the grounds, the legal reasons for referral, apply, and whether the hearing should go on to consider the need for legal measures (Norrie, 2022). A key difficulty of a grounds hearing is that the supporting facts panel members are required to read out to children and parents frequently involve details of distressing situations. Panel members often expressed a dread of grounds hearings. Prior to a hearing, panel chair Lisa remarked, 'I hope she [*the mother*] doesn't come, I hate reading them [*the supporting facts*] out', before commenting again as she read through the supporting facts prior to the hearing, 'I feel really bad reading out this'. The supporting facts documented the mother's substance misuse and the reports of neglect the child had experienced. As noted in the previous chapter, the child's mother attended this hearing, and as Lisa read out the grounds and supporting facts there was a subdued atmosphere in the room, and while the panel chair addressed the mother the other participants looked down, avoiding eye contact with each other.

Grounds hearings were also a distressing experience for parents. In hearing 4, the supporting facts involved allegations of domestic abuse including detail such as the child's father 'punching a hole in the wall' and 'overturning the bed'. As the panel chair Kathleen was reading these out, both parents became visibly upset. The child's mother became tearful and her hands started to shake while the child's father, sitting a few seats along from her, appeared overwhelmed, found it hard to speak, and could only nod his agreement with some statements. The impact on parents having these grounds read out - in front of a number of different people, some of whom would have been strangers to them both - not only highlights the significant challenges of this interaction, but also raise questions about the potential impact of such a process on the alleged victim of the abuse.

In both of the hearings discussed above the children were absent. Panel members Cheryl, Mary, Hazel and Richard described these hearings as being even more emotionally charged if children were in the room. Cheryl commented prior to a hearing involving supporting facts detailing domestic abuse, 'I hate reading the grounds if the child is in the room', while Hazel was heard describing to colleagues her experience of a grounds hearing as being the most difficult one she'd ever done because she'd had to

read out the statement of facts, detailing the father's assault of the mother, in front of the children as well as both parents.

These examples highlight the particular challenges of grounds hearings. There is no scope to avoid raising upsetting or difficult information or talk about concerns in less direct ways, and the process occurs at a point where children and parents are typically experiencing the process for the very first time. The findings also suggest that panel members' regular calls for children to be present at their hearings, as will be discussed further in the next chapter, are not absolute and that they do not see grounds hearings as a place where their meaningful participation can occur. Concerns around the ability of children and young people to participate in grounds hearings, and the potential impact on them, has long been noted as a concern (Erickson, 1982). There have been calls for children not to be exposed to this part of a grounds hearing, with recommendations including the process of establishing grounds being moved directly to the sheriff court (CHS, 2022b; Hearings System Working Group, 2023). At the same time, children and young people tend to already have first-hand experience of many of the incidents outlined in supporting facts. A children's rights perspective would be likely to argue caution should be exercised in removing any opportunity for a child to participate in matters affecting them on the basis of the need to protect them from distress. These findings can be seen to demonstrate not only why there are concerns, but also that consideration should be given to supporting panel members to manage the emotional work involved in the process.

7.2.2 Format and Duration of a Hearing

Another factor identified as contributing to the emotional work of hearings was the overall duration of hearing sessions. The standard length of a children's hearing is around 50-60 minutes, and panel members can take part in up to three hearings in any one session. It was not unusual in this study for hearings to start late or overrun. Decisions for each hearing have to be written up before the panel members go home, therefore it was not uncommon for panel members to enter the hearing room and not leave again until four or five hours later.

Panel members often talked about experiencing these sessions as long and tiring. Denise mentioned that one afternoon session she was involved in didn't finish until

7.30pm. George talked about a hearing he'd participated in that had lasted three hours because there had been delays in a relevant person arriving from prison, extensive paperwork, and a 13-year-old child who had become really upset by the proceedings. At the time this research was undertaken, hearings tended to run 'back-to-back' in a session; no sooner did one finish than panel members were thinking about the next one, and there was rarely scope for them to take much of a break in between. Follow-up interviews with panel members in 2021 indicated that one advantage of the online hearings was that the scheduling of hearings was being managed more carefully and that this afforded more of a break in between. It is not known whether this benefit has been carried forward since the resumption of face-to-face hearings in Centre A.

The tiring nature of a hearing session is outlined clearly in this comment from Mark:

I think it's sometimes, I suppose back to the previous question as well, it's maybe that side of it that people don't quite get as well, and again I don't think you truly get it until you do it, and, you know the actually sitting in front of people for that length of time, and making your decisions in front of everybody, and putting all that aside to move on to the next one, and then, doing that one, and putting that to the side, getting on to the next one, you know, it's kinda getting your head, it can be hard, by the time you get to that six o'clock point you're in your third hearing, everybody's drained, everybody's done, you know, you're tired, you're hungry, but you just have to kind of keep going.

(Mark, interview)

Mark's feelings were echoed repeatedly by other panel members during hearing sessions, as the comments I recorded in my fieldnotes demonstrate:

Claire is reminiscing about her first panel session. Says 'that first one, it'll never leave my mind – in the hearing room for five hours'

(Contemporaneous fieldnotes, Hearing 31)

Elaine notes that it has been 5 hours since they entered the room. She turns to me and says 'totally draining, that was totally draining'. They still have to write up the decisions.

(Contemporaneous fieldnotes, Hearing 55)

These comments raise questions about the impact of fatigue in the decision-making process. There is research to indicate it can negatively affect decision-making in other legal settings, with studies looking at judicial decision-making suggesting judges can

become more punitive and less engaged in lengthy court sessions as a result of decision fatigue (Danziger *et al.*, 2011; Torres and Williams, 2022). Decision fatigue is described in the literature as reflecting a more general phenomenon known as ‘ego depletion’ in which an individual has only limited internal resources to rely upon when making decisions, particularly if these are complex in nature (Torres and Williams, 2022). Interestingly, one advantage noted by Ross and Alex with respect to the virtual hearings operating during the Covid-19 pandemic was the reduction in the number of hearings per session. Ross said that having only one or two rather three hearings in a session was, unsurprisingly, much less tiring.

The pressure to reach a decision within a short period of time was also separately acknowledged. Cora, Anthony, Richard and Gordon all made reference to other tribunals where decision-makers are able to adjourn to discuss and reach a decision. Cora and Anthony talked about the benefits of employment tribunals where the lay members share the decision-making with a full-time judge, and that there is time to deliberate and prepare decisions and reasons before delivering them. Anthony found the lack of adjournment in the decision-making process a challenge, as did Richard as demonstrated in this extract from his interview with me:

Carol: Can you tell me a bit more about your thoughts on the decision-making process, what you've felt about it so far?

Richard: I think it has all the merits of a tribunal, if there's a point of disquiet about it, it's that we're expected to articulate reasoned decisions immediately... if we had say a five minute break to reflect on what we were going to give as our decisions and reasons before and the notion that you don't have any recess, that you would get in a jury trial or a court, but relatively untrained people are expected to come to a robust secure decision, and communicate it immediately back to the interested parties I think is a weakness of the system. I think we should build in a pause after a hearing, before we're expected to give coherent, reasoned decisions.

(Richard, interview)

Suzanne disagreed with the idea of adjourning however, saying she felt panel members would be ‘swayed’ by the opinions of others more if they discussed, and that the independence from each other was important.

Gordon expressed concern that the limited time frame resulted in a less thorough decision-making process, saying, 'sometimes I wonder if we ask enough questions or check the facts enough'. Linda also felt she just didn't get enough time in some hearings. She said sometimes this was down to the 'management' of the hearings, making reference to the differences in the skills of different panel chairs in how they controlled a hearing, but also that hearings were becoming more complex and more time was needed. Ross, as a newly-qualified panel member, described the 'pressure' of trying to deliver decisions in front of people without time to prepare, without making a mistake. He talked about 'everybody watching' while he is 'trying to get the structure right, and not forget anything', and to ensure that 'procedurally, I need to be, as tight as possible'. Similarly, Donald reflected on the on-the-spot nature of the decision-making:

You're making your decisions without any break, you know, you're not sort of, never mind going away, you're not even basically stopping, and thinking, because you're almost, your decisions are developing all the time, so, throughout the hearing, there are times that you need to be able to stop and try and get things sorted out in your head.

(Donald, interview)

Donald's comment highlights the pressures of the active decision-making that goes on in a hearing, where there is little or no time to stop and reflect on the information that is unfolding in the discussion taking place. Despite the written information that panel members get in advance to help prepare them for the hearing, the dynamic, relational nature of the meeting itself makes aspects of the decision-making process unavoidably fast and intuitive at times. Aside from the panel members' perspective on the need for time to deliberate, it is also interesting how children may perceive any lack of adjournment: in Griffiths and Kandel's observational study of hearings they noted that a ten-year-old boy felt this absence reflected a failure to give serious consideration to his views (Griffiths and Kandel, 2000a). There have been renewed calls for this to be incorporated as a feature of the redesigned hearings system (Hearings System Working Group, 2023).

7.2.3 Contact: 'the Most Emotive Issue'

The final area where emotion talk featured prominently involved decision-making regarding birth family contact. Described by Rhona as 'certainly the most emotive issue', and Denise as 'probably the most contentious', telling parents that contact with their child was going to be reduced or terminated was unsurprisingly a difficult task for panel members. Many panel members commented on this after having to deliver decisions that reduced or stopped contact between a child and parent: for Joan, the decision had been 'horrible' to deliver; for Hazel it was a reflection that while she recognised that decisions involving contact were about trying to focus on what the child rather than the parent needed, it was 'very difficult, you can feel quite horrible'; and for Rhona, it was her comment after a hearing in which she had told a mother that contact with her child would be ceased, 'I hate that... saying to someone's face you're not getting contact'. Roy, however, was an exception. When asked about his views on contact decision-making, he answered matter-of-factly, 'it's not difficult for me, parents think it's about them, but it's not'. Observations of Roy's engagement with children and families suggested his general approach to decision-making was less sensitive to parents' feelings and emotionally-informed than some of the other panel members; for example, he was one of the panel members who employed the phrase 'calm down' in trying to support a distressed parent, an approach to emotional regulation of others discussed further in the next section. Overall, the feeling amongst panel members was that this was a difficult aspect of the role.

Signs of emotion were frequently evident during hearings when contact was being discussed, whether it was in a mother who struggled to speak when asked her views on the duration and quality of contact with her children, managing only to say 'it's not long enough', a contact worker who struggled to contain her own emotions as she described the impact of contact on a child, telling panel members that in all the years she had done the job she had 'never seen a baby so distressed', or in the voices of panel members as they gave their decisions. Amongst the panel members, it was seen in hearing 29 when Dawn's voice began to waver as she told parents that the decision on contact was not going to be what the parents wanted to hear, and in hearing 55, as mentioned earlier, when Elaine said 'twenty years as a panel member and I'm just lost', following this with a long pause before she delivered her decision to end contact. It was also arguably

featured in a temptation to delay some decisions, as hinted at by Amanda in a hearing involving a request to suspend contact between three children and their mother. While her colleague Dawn sought to appoint a safeguarder to get further information on the nature of contact, Amanda was heard to comment, 'a safeguarder won't get me off the hook' as she proceeded to decide in support of the social worker's recommendation, suggesting that she felt there was enough evidence present already to make the decision.

As well as the emotions panel members described feeling themselves, they also regularly expressed sympathy for parents in relation to the regulation of contact. Ahead of a hearing in which termination of contact between parents and their child was being recommended, Cheryl commented on how hard it must be for someone to be a 'wonderful mother' in a contact centre for 45 minutes, her words suggesting a clear sympathy for the pressures placed on parents when interactions with their children were being closely scrutinised. In a discussion that took place between panel members after they had increased contact between a parent and child, against the recommendation of social work, Annie defended her decision in the discussion saying 'how is she going to be assessed if she only sees him [*her son*] once a fortnight?'. Agreeing, her colleague Mark added, 'how are they expected to bond once a fortnight? How would we manage with someone watching us?' Not everyone held this view. Donald, following a contact decision in a different hearing, indicated he took a different perspective to the time-limited, frequently supervised nature of contact, commenting to his colleagues that 'a baby sees their granny or grandad once a week' and is still able to build a relationship with them. However overall, sympathy for parents in relation to regulated contact was common. This sympathy, specifically around decisions involving contact, appeared to tap into a particular kind of relatability panel members experienced in relation to parents. It suggests that familiarity with the challenges of being a parent, and knowing that there was no such thing as a perfect or 'wonderful' mother or father seemed to evoke feelings of understanding for parents amongst panel members that other issues facing children and families did not.

Alongside this sympathy for parents in relation to decisions involving contact, criticisms of, and an implied lack of trust in, social workers and the evidence they provided, were evident. Prior to hearing 55, George was heard telling colleagues that the 'child has been

distressed, according to them [*social work*]’ before adding, ‘it’s hard to imagine’. George can be seen to draw on his own experiences here in saying it was difficult for him to believe a young baby could be so upset by contact with a parent. His disbelief also implicitly challenges the social work account of the distress. It is not until George is in the hearing and hears from the contact worker, someone he trusts to challenge social work, that he is convinced by the evidence put forward. Scepticism of evidence put forward by social work in relation to the emotional impact of contact was also expressed separately by Vicky:

And if I see this report that says the child was screaming, and screamed for half an hour, I don’t actually know what that means. And I’m not doubting that social worker’s professionalism, but, it’s so difficult to quantify and identify, that this is what’s causing the distress.

(Vicky, interview)

Despite her denial, Vicky’s comment suggests she does doubt elements of the social worker’s assessment. It suggests that descriptions of an upset child are not enough - Vicky doesn’t dispute the distress being reported – but that a more convincing case needs to be put forward for reducing or ceasing contact. The questioning of information provided by social work in relation to birth family contact is consistent with more general issues relating to professional trust between panel members and social workers already discussed in the findings in Chapter 5 as well as in the wider literature, as highlighted in Chapter 3 (Gadda *et al.*, 2015; Kurlus *et al.*, 2016; Hill *et al.*, 2017).

George and Vicky also both appear to be challenging the notions of ‘distress’ being presented to them. What constitutes distress, how it should be understood, and how it should be responded to, is reflected in wider debates in the literature. Distress can be interpreted variously as a psychological harm or alternatively a natural response to separation from a parent. Concerns about the psychological impact of continued contact between children and parents who have harmed them sit alongside arguments that distress should be interpreted as a sign that meaningful support is required for the child and parent rather than merely a signal to reduce or cease contact (Schofield *et al.*, 2000; Moyers *et al.*, 2006; Loxtercamp, 2009; Simmonds, 2010; Sen and McCormack, 2011). Panel members often see first-hand the distress experienced by parents in relation to plans for contact, but rarely the distress children were being reported as experiencing.

Ahead of hearing 6, Yvonne praised the social worker's report before commenting to me that she did not always feel like this about reports and contact recommendations; she believed there was 'often an agenda' for social workers in seeking to reduce contact if permanence planning was anticipated. Yvonne was referring here to a perception that social workers will try to seek a reduction in face-to-face contact between a child and parent before an application for a permanence order has been lodged in court (Whincup *et al.*, 2019). This is because, once the application is underway, any subsequent changes to the CSO have to be made with the permission of the sheriff. Contact must be based on the individual needs of the child, not on any plans for permanent alternative care; under section 25 of the *Children's Hearings (Scotland) Act 2011* any decisions, including on contact, should ensure the child's welfare is safeguarded and promoted through childhood. The study by Whincup and colleagues on permanency decision-making also noted a concern amongst participants that panel members can be nervous about pre-empting the decision from a sheriff on permanence, leading to a reluctance to decrease contact, citing the length of time that permanence can take and the difficulties that can exist in finding placements for children (Whincup *et al.*, 2019).

7.3 Managing the Emotional Demands

We have seen in this chapter that emotion can be a significant feature of children's hearings, affecting children and parents as well as panel members, and that grounds hearings, the duration and dynamics of hearing sessions, and decision-making around contact all place particular emotional demands on panel members. This chapter now concludes with a focus on the emotion work required of panel members to manage their own feelings and those of other participants.

7.3.1 Managing One's Own Emotions: 'Thinking with Your Head'

Panel members obtained support to manage the emotional challenges of the decision-making task from different sources. Some talked about how they relied on colleagues as a source of support. Mark and Helen said the time at the end of a hearing session often acted as an unofficial debrief period, offering an opportunity for panel members to reflect on how the hearing had gone and how they were feeling. Lorna agreed but felt

there wasn't always enough time to fully reflect because other panel members needed the room for the afternoon session, or at the end of the day people were simply too tired, and keen to get home. Other panel members, more typically those who were recently qualified, talked about informal support networks involving colleagues who had trained together. Some belonged to Whatsapp groups where panel members were able to ask each other questions for advice about different types of hearings or other procedural issues. Helen found the learning and development sessions organised by the Area Support Team useful in providing an opportunity for panel members to come together and talk about cases or situations that had 'bothered them', and to try to learn from this. A buddy system also existed which paired experienced panel members with newly-qualified ones with the aim of allowing those with experience to offer support, although feedback on this system was mixed. Some panel members felt there wasn't a great deal of formal support available but that they felt able to manage the challenges of the role by relying on coping strategies developed through other personal or work experiences. The pandemic was noted to impact further on how supported panel members felt. George said the lack of face-to-face time with panel members made it harder to work together as a team, while Alex said he felt a virtual chat did not offer the same opportunity for 'decompression' as chatting to his colleagues in person.

Panel members rationalised the decisions they made in a number of ways. A common approach was to invoke the best interests of the child principle, as can be seen here in this comment from Ross when reflecting on a difficult decision regarding contact he had delivered to parents:

I think given that, given the fact there was no, there was no middle ground, and the fact that the overriding, the overarching principle is that, what's best for the child, and you really, really feel for the parents, as a parent yourself. You really feel for them. But, it's what's best for the child at the end of the day, and that's, if the child's in that much distress, then I can't let that child be in any more distress, you know. I went home that night and probably thought about that one than any other one and, thought, yeah I made the right decision.

(Ross, interview)

Ross can be seen here to acknowledge the relatability aspect of being a parent discussed in the previous section, and how hard it is to make a decision that involves reducing or

ceasing contact. He notes how much he reflected on his decision afterwards, but defends the decision by focusing on the need to protect the child from further distress. Similarly, Mark described how he tried to maintain a focus on the child's needs when dealing with the challenges of delivering an unwelcome decision, despite the challenges of sympathising with the parents. As the previous section has also touched on, the 'best interests' discourse invoked here is one of the need to reduce or avoid 'distress'. Yet, there is no concrete standard for the concept of 'best interests' and the discourse around this concept has been subject to critique in social work contexts (Keddell, 2017). This is discussed further in the next chapter.

Another approach employed by panel members to manage the emotional demands of the decision-making task was to emphasise the limits of their role within the wider context of the child's life and the system. Donald said he was able to 'switch off' by recognising that he wasn't there to 'solve anybody's problem, the problems that they make will still be there when you go away', and that at the very least he hoped the 'decision that you make is moving things on in a positive way'. Lorna acknowledged the importance of the role but also the need to avoid letting it 'burden' her because she recognised she had no capacity to change past history.

For Donald and Lorna, locating their decisions within the wider context of the child's life helped them understand the limits of their role. However, there was also a risk of this approach potentially underestimating the impact of their decision-making. Lorna talked about making 'bite-size decisions' that she hoped would 'do the best for the child', adding:

In each panel, you're not necessarily making a decision for that entire life of the child, it's, you know, there'll be contact every second week, that's not forever, you know, or, you're not going to get to see, maybe not forever, or, you're going to have to live here, not necessarily forever, you know you've got to put it into perspective that, it's, it has to be time-relevant, that it's what's right at the time, but things can change and progress.

(Lorna, interview)

Similarly, Melissa was heard saying to colleagues she managed to 'sleep at night' by telling herself that she'd made the right decision at the time and that 'it can always be

brought back [to a hearing] by a social worker'. Other panel members also said they found it helpful to remind both parents and themselves of the right to appeal, that a decision was not 'permanent', and that these decisions could be challenged. This approach could arguably be seen to be at odds with the reality that many decisions made in a hearing *are* permanent, and even if challenged, may result in protracted legal disputes or difficult circumstances for children and families in the meantime.

Some panel members stated that they simply accepted the emotional challenges of decision-making as being part of the job and that valuing more positive outcomes helped balance out the more challenging hearings, as demonstrated by Marion who said, 'sometimes it can feel all bad, but then you get a good one [hearing]', and that it was just important to appreciate 'good' outcomes when they occurred.

Regardless of the strategies employed by panel members to rationalise or frame their decision-making, overall, there was a clear acknowledgement that emotions had to be carefully managed because of how they might influence decision-making. As noted already by Ross, above, sympathy for parents was identified as a key feeling to watch out for. Mark said this was an issue he discussed with newer colleagues:

I often say to people, don't go, it's easy to try and go with your heart, aw we'll just give them one more chance, we'll keep the child with the family, or we'll give them contact and we'll do that because you're thinking with your heart, you're thinking about the human side of things, but sometimes you just have to just think with your head.

(Mark, interview)

Mark's description suggests that sympathy for parents could be powerful and that care had to be taken not to let it result in decisions being made that prioritised the parents' needs over the child:

That's when the emotion comes out, and that's when the head and the heart start playing with you a wee bit, and where you always need to think, keep, I know here you're thinking, aw bless, I don't want to upset you, but, it's just, it's thinking with your head, and thinking what's right.

(Mark, interview)

While Mark describes the challenges of trying to keep the child's needs at the forefront

of decision-making and avoiding being influenced by parental distress, he does not explicitly acknowledge that any decisions he has made have been influenced by this, unlike Annie, who acknowledged that this had occurred, and that it was only with experience she had learned to concentrate more clearly on the child's needs and interests:

Over the years, I've definitely got better at that, and I've realised that, you know, it's not about siding, it's not about the mother, it's about the kid. But because a lot of panel members are parents themselves, it's quite easy to see it from the parents' point of view rather than the child's point of view, and I had felt quite a lot that it seemed pretty unfair on parents to be you know, for us to be saying you know, we are reducing contact or you're not actually going to see your kid at all. I did wonder about, the, uh, were we really the right people to do that? But I think I've grown into it.

(Annie, interview)

Annie's comments show how difficult it can be to remain child-centred when the parents' perspectives are easy to understand as a fellow parent, again echoing the relatability factor discussed earlier. In saying 'I've definitely got better at that', she signals that feeling sympathetic towards parents has in the past influenced her decision-making. Also highlighted here is the challenge for panel members of maintaining a focus on the child's needs not the parents', a particular concern when the presence of children in hearings, especially younger ones, is so low. How a child's point of view is represented, and kept at the foreground of decision-making, is discussed further in the next chapter.

The suggestion that the presence of parents and aspects of their contributions in hearings can affect decision-making has been an enduring one (Martin *et al.*, 1981; Hallett and Murray, 1998). In recent studies, social workers have shared concerns that panel members could feel intimidated by parents (Hill *et al.*, 2017) or 'err towards excessive sympathy' if they were upset (Kurlus *et al.*, 2016, p.41). The findings from this study suggest these feelings are not without basis, and that panel members have to engage in active emotion work to manage feelings of sympathy for parents overriding a focus on the child.

7.3.2 Managing the Emotions of Others

In addition to having to be mindful of their own emotions, panel members have a central role to play in responding to and managing the emotions of others in a hearing. That this is a key task for panel members is highlighted by the presence of a chapter titled 'Managing complex hearings' in the Practice and Procedure Manual. In this, the potential for 'difficult hearings' is noted and advice is provided on managing different scenarios such as how to respond to someone who is angry or distressed, as well as reminding panel members of the importance of knowing one's own 'trigger points' and remaining calm and showing empathy (CHS, 2022a, p.238). These are concepts familiar to anyone working in environments where crisis communication is required, but often less easy to isolate and apply effectively in practice (Sikveland *et al.*, 2021).

Managing the emotions of participants was not an uncommon task for panel members. They talked about the skills needed to respond carefully to different emotions, avoid potential disruption to discussions, and ensure a hearing was managed well. Donald felt that the role required them to understand and be 'sympathetic' to participants who were struggling to manage their emotions, while also 'trying to keep them under control so that they're not sort of shouting insults back and fore at social workers and these sorts of things'. Annie also felt it was important to deal sensitively with displays of anger and not let a situation 'get out of hand'. Annie and Donald's comments highlight the delicate balancing act required in supporting participants without compromising the rights of others.

Empathy for families was viewed to be essential. Like Donald, Mark said that he thought it was 'important to show empathy' and show that you recognise that 'this is really difficult' when delivering decisions. The importance of adopting a non-judgemental, empathic approach in supporting participation was reflected in hearing 46 when Joan was observed asking a young person a question. When he didn't initially respond she added gently, 'I know this must be difficult, could you just nod?', then thanked him when he did so. Likewise, in hearing 60, Christine was seen explicitly acknowledging with parents that, regardless of the circumstances that have led the children to be accommodated, the plan for permanence and seeing the children for the last time 'must have been very hard'. Anthony's view was that, just because a hearing was a 'legal

tribunal', 'that doesn't mean that you can't display empathy'. He said it was important to ensure people were made to 'feel welcome and that their contribution's important', keeping the 'pomp to a minimum'. An empathic approach communicates a non-judgemental attitude, and making people feel valued can encourage participation (Forrester *et al.*, 2021).

Recognising feelings and emotions in an empathic and respectful manner was important not only in terms of showing respect and care to participants but also in helping manage dissent or disagreement in the hearing and keeping discussions on track. In hearing 52, while the social worker was speaking, the child's mother could be seen shaking her head vehemently in disagreement. Rather than ignore this, the panel chair Polly paused the discussion to acknowledge the mother, saying in a gentle tone, 'I can see you don't agree, *but I will come back to you*'. When this happened again a short time later, Polly repeated her words of reassurance, telling the parent her views were important and that she would get an opportunity to speak. There were no further interruptions and after the social worker had finished speaking Polly immediately turned to the mother and asked for her views. Similarly, when a mother in hearing 3 started to become upset and argue against the decisions being delivered, the panel chair George paused to acknowledge this, telling her, 'I appreciate it is a really difficult decision for you...', before letting her know that no further discussion could take place because the panel were at the decision stage. The mother was able to remain in the room and hear the decisions conclude. This acknowledgement of the mother's feelings as the first action, rather than only, or first reminding her that the hearing needed to proceed, aligns with research which argues empathy is important in demonstrating perspective taking, and that it can help relieve distress, support emotional regulation, and improve communication (Gross, 1998).

Calm Down!

Not every panel member was able to skilfully manage their own emotions and the emotions of others in the hearing room. In Anthony's opinion, many panel members struggled with displays of emotion in others, and this interfered with how hearings proceeded. He acknowledged the complexity of managing heightened emotions amongst participants, and noted there were 'loads of things to balance' including the

limited time available for most hearings and the fact that ‘another family are sitting outside and they’re through the roof with stress, waiting to come in, it’s a difficult thing to get right’. Nonetheless, he believed some panel members struggled to manage displays of heightened emotion:

I think that, when it's fraught, people, panel members, eh, are, uncomfortable with that, and they rattle off their decisions as quickly as possible to get the family out of the room, if I'm being honest... it doesn't make me uncomfortable to see somebody crying, 'cos I look at it and go, you're upset for a reason, your child's just been accommodated or whatever, like, but it's just a, they just sort of, decisions and reasons, robot robot, quickly, oh look, people are getting emotional, aaah, don't like this, get them out of the room.

(Anthony, interview)

Anthony’s comments illustrate how uncomfortable people can be with displays of negative emotion, and that their choice of emotion-response strategy can influence how a hearing proceeds. This has important implications for participation in the decision-making process. Here we see Anthony describing responses which, rather than validating and helping contain the individual’s feelings, ignore these, and that in seeking to avoid displays of negative emotion, fair process can be jeopardised.

As well as seeking to avoid displays of emotion by rushing through a hearing, Anthony felt some panel members could create or exacerbate tension because they lacked the skills to chair a hearing well and engage sensitively with children and families. He recounted a story of a colleague who had responded to an angry parent by also raising his voice, which only served to make the situation worse:

That's where I go, even in terms of, EQ, emotional intelligence, I would say some people are lacking, and, you know if you're not picking up on that behaviour-wise, you're just looking at it and going, well he's getting aggressive, so you're countering that by raising your voice, and then he raises his voice, you raise your voice, and then we're all at fever pitch, and the guy's going to hit you, like, you know.

(Anthony, interview)

What is being suggested here is that the ability to verbally de-escalate situations in hearings, where emotional experience is not only common but also to be expected given

the seriousness of the decisions being made, requires an insight not only into what others are feeling, but their own reactions, or 'trigger points' as noted in the Practice and Procedure Manual (CHS, 2022a, p.249).

Annie agreed that in some cases, panel members could create or exacerbate tensions in the way that they responded to parents, and also that underpinning this was a lack of regard for the parent. In her view, if parents 'sense the panel member's not being respectful, they can *really* sense it', and once this happens 'hearings can go a bit pear-shaped'. This touches on her earlier point outlined in Chapter 6 where she raised concern about some panel members exhibiting a sense of superiority towards families. Annie's choice of the word 'sense' further highlights that this disregard may be subtle rather than overt but that it can still be picked up by families.

Whether the issue was one of failing to pick up on cues, not knowing how to respond to them, or a more deliberate disrespect for children and families, observational data from this study supported the view that responses from panel members could be unhelpful in managing negative affect. One example involved the use of the phrase 'calm down'. In three different hearings, panel members were observed saying this to an angry parent. In one of the cases, a parent³⁹ made a veiled verbal threat towards the social worker to which panel chair Melissa immediately responded by telling the parent to 'calm down'. The parent replied saying 'dinna fuckin' tell me to calm down' before storming out of the room. Upon returning, they muttered 'I fucking hate you' to the social worker. Melissa responded again saying, 'we will have no threats in here' to which the parent replied, 'it's not a fucking threat, you'd know this, I'd fucking do this'. Melissa replied, 'it is'.

At this point, Melissa's colleague Christine stepped in, turning to the social worker and asking her a question, diverting attention away from the parent. Although the parent remained highly distressed, this allowed the hearing to continue. However, their emotions intensified again when the social worker started talking about permanence plans. At this point the parent's whole body started shaking causing the parent's chair to rattle against the floor. Chewing their lip and shaking their head, the parent then made another indirect threat towards the social worker. Both panel members again

³⁹ Gender neutral pronouns have deliberately been used here to minimise the risk of identification of the parent

responded, Melissa to say 'there'll be no threats here', Christine instead quietly and gently acknowledging the parent's feelings, saying 'I know you're not in agreement'. This recognition seemed to help the parent and even though their distress remained evident the parent was able to remain present for the rest of the hearing.

Not all hearings involve encounters of such heightened emotion; however, when they do, as can be seen in this example, the response of panel members to displays of anger and distress can vary considerably, and result in different outcomes for parents in terms of their participation. Melissa's directive to 'calm down' succeeded only in doing the opposite. Her subsequent interactions with the parents arguably followed a similar vein of seeking to control rather than provide containment, a key concept in managing emotions (Bion, 1962). Melissa recognised the need to protect other participants from threats and abusive behaviour, but from the interaction it could be seen that her commands had the opposite effect in terms of arguably increasing the parent's agitation. In contrast, Christine was able to employ a strategy of distraction, by shifting the conversation to the social worker, and validation, by speaking in a gentle and empathic way and acknowledging the parent's views. This proved to be a more effective approach in supporting the hearing to continue.

The importance of using carefully chosen words and phrases to avoid adding to distress in highly emotive contexts was acknowledged by several panel members. After the hearing described above, Christine reflected on the parent's distress and told her colleagues she had been very conscious of using the phrase, 'prospective carers', rather than the word 'adopt' because she felt it could upset the parent more. Mark talked about the difficulty in phrasing things carefully and how a poorly chosen word or phrase could very quickly lead to anger:

Yeah, and I think it's, probably the biggest thing that all new panel members worry about is, the decision, 'cos everyone knows, new panel members will often say, I know it, I've got all the theory there, but it's actually verbalising you know, actually saying the thing in front of people, I think that's the bit that's, and even after, I'm quite new compared to some other panel members who've been doing it for 20 years, 30 thirty years, but I think it's the bit that for all of us, we all, 'cos that's the real, that's the bit that's likely to light the touchpaper for some families as well, depending if they don't like what you say.

(Mark, interview)

These comments from Christine and Mark illustrate how emotive and upsetting discussions in a hearing can be, and that careful language use is essential, touching on the themes discussed in the previous chapter. In Anthony's view, some colleagues contributed to tense situations in how they asked questions, and gave an example of one colleague who in his view unnecessarily started reviewing sensitive past history at the start of a children's hearing. Anthony described the panel member as being 'quite inflammatory in some of the language he was using', and felt that the recap served only to embarrass and shame the parent. In Anthony's view, 'barring a grounds hearing where you have to read that stuff out', going over past history was not conducive to a productive discussion in the hearing, and that panel members needed to think about how it might feel to have one's life on display, and be as respectful as possible about this.

Anthony's point about the choices that are made about what topics to discuss, or not discuss, in a hearing, draws attention to the challenges of knowing both what topics to discuss, and how to discuss them. Some panel members acknowledged feeling reluctant to broach difficult or sensitive issues with children and their families. Ahead of one hearing involving a recommendation for permanence and adoption for a child, Jana said she found it a challenge to 'bring up hard topics', with her colleague Linda concurring, adding, 'I always get tongue-tied'. Despite her acknowledgement of the challenges in navigating difficult topics, Jana was observed to manage a potentially difficult conversation well in the hearing, preparing a parent for the conversation by stating, 'I don't want to bring up hard topics, but we need to talk about...', an approach known in systemic therapy as 'warming the context' (Forrester *et al.*, 2021, p145).

In other situations where difficult topics were about to be brought up, language use could become vaguer and more euphemistic. For example, in hearing 34, Donna made reference to a young person's offending behaviour by referencing 'his vulnerabilities'. The balance between discussing concerns honestly, and being sensitive to the fact that a children's hearing is not always the most appropriate place for every conversation, was observed to be a difficult act to gauge. Early research which showed difficult issues present in social work reports seemed to act as a signal to avoid potentially 'emotionally disturbing' topics of conversation being discussed in a hearing, even if this was a major

factor in the child's current difficulties (Martin *et al.*, 1981, p.125). However, in Anthony's view, a hearing was not always the most appropriate forum to deal with some topics directly, and he argued that participants have a right to privacy where possible, and that not everything should be open for discussion at every hearing.

A final point on the emotion experienced by parents concerns panel members' views of this emotion. Reflecting on the emotions that parents experienced, Joe said that the hearing system fundamentally disadvantages parents because they tend to have less capacity to manage the greater intensity of the emotions they experience and to articulate their views well. He believed these emotions affected the decision-making process by hampering the ability of parents to navigate hearings and contribute meaningfully and effectively. This view was shared by Donald who noted the challenges of supporting children and families coming into the hearing system 'at a difficult time in their lives, people who you know, can't express themselves very well'. These comments from Donald and Joe appear sympathetic but also suggest that many of the issues which arise are a result of the parents' difficulties in emotion regulation, rather than the emphasis being on, as Donald says, the difficult time in their lives they are experiencing. Given some of the decisions being made in hearings, such as parents permanently losing the care of their child, it is not clear what kind of emotional displays, or emotional regulation, panel members should be expecting. Anthony noted this when he said he felt many panel members didn't fully understand how much people's lives were on display, and questioned how it felt for children and parents to experience strangers talking about them and their family. He went on to say:

I see it for what it is, which is, it's the state interfering in your private life, and it's the ultimate interference.

(Anthony, interview)

This point illustrates the need for panel members to not only think about how children and families might be feeling, and how to respond effectively, but to interpret these feelings as understandable given the context.

7.4 Conclusion

This chapter has demonstrated the centrality of emotion in the decision-making process. Heightened emotions in children and families are a common feature, and parents in particular often displayed physical, verbal and non-verbal behaviours consistent with high levels of emotional distress. Panel members also experienced emotion in hearings. Although some of their experiences of emotion could be positive, such as when hearing about how well a child was doing, descriptions of negative emotions occurred more frequently. Panel members could feel nervous or anxious, sometimes showed signs of irritation, mistrust or censure, and also on occasion described experiences that were consistent with feelings of stress and fear.

Certain tasks or aspects of the hearings process were recognised as having the potential to place additional emotional demands on panel members. Grounds hearings, usually the first time a child and family experience the hearings system, require legal grounds and supporting facts often involving distressing detail to be read out to parents, with children sometimes present too. Panel sessions can run for four or five hours with little time for panel members to take a break, and this, combined with the emotional labour often involved in hearings, can result in high levels of fatigue. Decision-making in relation to birth family contact was described as being one of the hardest aspects of the panel member role, in large part due to tensions in terms of making sense of the evidence, and the challenges involved in delivering upsetting decisions to parents.

In managing the emotional demands of the decision-making task, panel members drew on support from colleagues and relied on cognitive coping strategies such as rationalising the decision by invoking the 'best interests' principle, minimising the importance of their role, or emphasising the reversibility of their decisions. These strategies pointed to some uncritical assumptions of the term 'best interests', a minimising of the powers wielded in the decision-making task and an optimism about the reversibility of decisions that also lacks a consideration of the impact on children in the interim.

Some key points were identified with respect to the role of emotion in panel member decision-making. There was acknowledgement that panel member sympathy for parents could be powerful and that care was required not to lose sight of the needs of the child in such cases. There was also evidence that panel members not only varied in

their capacity to manage this effectively but could in some cases contribute to emotional responses through unhelpful interactions. If panel members failed to pick up on certain cues about the distress of participants, or were less skilled in their interactions and responses, participation could be adversely affected; this could result in children and family members not being able to communicate their views, because they were too stressed, upset or angry, or panel members seeking to rush through a hearing because they were uncomfortable or nervous about some of the emotions being expressed. In contrast, direct acknowledgement of parents' feelings and making it clear their views would be heard helped regulate difficult emotions and recognise the authority of parents in proceedings, that who they were and that what they had to say was of value. The findings in this chapter show how decision-making in hearings is shaped by emotion, and that the management of hearings is central not only to how emotion and conflict is managed but in avoiding it in the first place, and that disrupted hearings and inhibited participation undermine the effectiveness of decision-making and the fairness of proceedings.

8 Hearing Children

Well, the child's view is always important. That's paramount, that we get the child's view. And our overarching principles, is welfare first, and child's view. And then the no order principle. Those are the three overarching principles and we need to be mindful of them. We got the child's view today in one of the hearings because he'd seen the children's rights officer.

(Mary, interview)

The previous three chapters have explored the ways in which information, interaction and emotion play a key role in panel member decision-making. This final findings chapter now returns to *why* panel members need to read reports, interact in hearings, and manage their and other peoples' feelings: because they are making decisions about a child. In the quote above, Mary can be seen to demonstrate her knowledge of the three overarching principles which apply when making decisions about a child in a hearing; the paramountcy of the child's welfare, the principle of minimum legal intervention, and that panel members must give a child the opportunity to express a view and take that view, where appropriate, into account (Norrie, 2022). This chapter is about the final of these three principles, and *how* it is done. How do panel members get the views of children? How do they listen to them? How are they able to be, as Mary puts it, 'mindful' of them? It also explores the final point touched upon by Mary: who, when a child is absent from a hearing, is best-placed to represent their views?

The chapter begins by providing a very brief overview of current debates and thinking in the wider literature on children's rights and participation to help set the scene for the discussion that follows. Next, it explores how panel members make sense of children's verbal and non-verbal communication in hearings. Following this, it looks at what barriers to children's engagement exist and what role panel members have to play in supporting, or inhibiting, their participation. The chapter ends with a focus on how children's views are represented in their absence in hearings and the central role of trust in ensuring the child is heard even if they are not physically present.

8.1 Children's Views and Participation: Current Themes in the Research

It is a fundamental principle of a children's hearing that the child is central to decision-making and must be given the opportunity to participate, that is, to express a view, and for panel members to take account of this view in their decision-making. Therefore, supporting the child to participate in a hearing is an essential aspect of the process. For over fifty years, panel members have sought to meet and speak with children and young people face-to-face, with varying degrees of success, as I discussed in Chapter 3. In that time, thinking on how to involve children in their decision-making regarding issues that concern them and their family life has changed considerably. While children's participation in decision-making in children's hearings has been somewhat under-explored, there has been increasing attention in the wider field of children's rights on how to prompt people working with children to think more critically about how they engage with them (Hart, 1992, 2008; Lundy, 2007).

Both Hart's 'ladder of participation' and the Lundy model of child participation have been influential in their shared emphasis on avoiding tokenism and protectionism and instead seeing children as having capacity and competence. However, there have been persistent challenges to actualising this in practice (e.g. McCafferty, 2017; Mitchell *et al.*, 2023). Gaps between these aims and principles and their actualisation in reality have been documented across a range of decision-making contexts and countries (e.g. Archard and Skivenes, 2009, Winters, 2009, 2010; McCafferty, 2017; Tisdall, 2018; Mitchell *et al.*, 2023). Tisdall (2018) argues that children's competence and capacity has been strongly informed by the idea of child development as a staged process with the implications that the younger the child, the less competence and capacity will be present. By seeing children as less competent and capable, they become viewed as more vulnerable and in need of protection in decision-making settings. Tisdall and others have argued that this is reflected in court proceedings involving children in Scotland, where welfare is still a central focus and there can be a struggle for the child to be seen as someone with agency and a right and capacity to participate in decision-making (Tisdall, 2016).

Children's rights and best interests can sometimes be presented as in competition with each other, as if there needs to sometimes be a trade-off, or balancing of rights, and

social workers in particular frequently articulate their concerns when working with children about their vulnerability, and that they feel the need to protect them from further harm and burden through exposure to additional information and responsibility (van Bijleveld *et al.*, 2015). This has been criticised from a children's rights perspective with the argument made instead that participation should be seen through the lens of welfare; that we protect children *by* ensuring their participation and that they are listened to (McCafferty, 2017; Tisdall, 2018; Mitchell *et al.*, 2023).

8.2 Making Sense of Children's Communication

Many panel members demonstrated a strong wish to see children in their hearings and believed their presence was an important contributor to the decision-making process. Richard was a keen advocate of children attending their hearings and being given the opportunity to talk about their lives. He believed it was wrong to make decisions about a child in their absence, arguing that the presence of children of all ages could inform decision-making, citing as an example a '13-year-old child who was wonderful at participating even though we were right across the desk and this was the first time she'd been in a hearing'.

For some, the presence of children was seen to offer the opportunity to help establish a more definitive, clear view from them, particularly if the hearing involved disputed issues. Donald shared some reflections regarding an upcoming hearing where contact was being debated between two parents and the social worker had reported the child's view as 'fluctuating'. Donald wanted the child to be in the hearing so he could seek her views directly:

And the social worker is saying she's not sure about it, because, the child's views seem to sort of change week by week. She's never sort of really sure, so it's these sorts of things where you actually want to have the child [in the hearing] and want to be able to have a chat with child saying, look, what's the state of play, you know.

(Donald, interview)

Donald's comment suggests that the child's attendance at her hearing and the questioning from panel members could help resolve or clarify any uncertainty on the child's part. Yet, given her ongoing mixed feelings about contact, it is unclear how the

panel member would be able to gain a more definitive view in the hearing itself. Her 'indecisive' feelings *are* her feelings: yet this fact that children, like any adult, can hold more than one view on an issue is not well-recognised here. Instead, Donald appears to indicate that by speaking to the child and asking what the 'state of play is', he will be able to get to the 'truth' of the matter. This could also be seen to reflect what Tisdall (2018, p.173) critiques as an implicit, desired norm for 'stable decisions' from children.

In her interview, Helen displayed an enthusiasm for seeing children in their hearings similar to that of Donald; however, she was careful to avoid relying heavily on what children said in hearings to inform her decision-making, saying she believed that there can be differences between what children and young people say in hearings and what they feel or think at other times. Talking about a decision she had made about contact between a boy and his mother, she observed:

Do you know what, if you ask for his view, if he was sitting in front of you, he wouldn't have said, no, I don't want to speak to her, but actually the way he was reacting after contact tells you his view.

(Helen, interview)

Her comment can be seen to highlight a need to take into consideration the context in which views are being put forward, and to recognise that children communicate their views in their actions and behaviours outside of the hearing room too. This caution towards the views children present in a hearing, and how they are used to inform decision-making, was also shared by Joan. Referring to the child's experience of sitting in a hearing, Joan said she didn't think it was possible to 'get honest views from an eight-year-old in that situation, because it's overwhelming you know'. She went on to emphasise that the key issue was not the child's age but the context in which the views were being sought, saying that a child in a social situation with trusted adults could offer their views in a very different way. Panel members' views on barriers to children's participation are discussed further in a later section.

8.2.1 Non-verbal Communication

For many panel members, the ability to observe non-verbal communication and interaction between children and their parents in a hearing appeared to be almost more

instructive than children's verbal contributions. Vicky felt younger children were too frequently excused from hearings because of the argument that they were 'too young to contribute meaningfully', but argued a lot can be gleaned 'from even a toddler moving around and watching how parents interact, who they go to if they bump their head and that, there is stuff there', that 'you know you can pick up that mum's kind of shut down to the kids, but they go to dad, and when they sit of dad's knee they "diddle" them automatically, and there's a bit of comforting going on, and a bit of affection you can see that'. This was echoed by Donald who felt it could make a 'huge difference to see, you know, children come in, who they sit beside, who they're looking at, you know, you quickly get a feel for, oh, doesn't want to have anything to do with dad, you know, just from, the first couple of minutes'.

These comments illustrate the importance for panel members of direct observation of parent-child interaction. For both Vicky and Donald, being able to see who a child seeks comfort from, or prefers to avoid, provided them with valuable information about the quality of the child's relationship with a parent. Similarly, Rhona shared in her interview that her opinion often changed between reading reports and seeing a child in a hearing because according to her, what was most helpful when making a decision around contact was 'seeing the interaction between the child and parents'. Richard too, noted the importance of non-verbal as well as verbal communication when he commented that young children 'are able to give us a much better picture from their presence, and their responses and their body language, as to how they're feeling and what their preferences and interests might be'.

Joan though, was again more cautious, questioning the wisdom of seeking to infer the quality of a child's relationship with a parent from a brief period of interaction at a single hearing:

I've also heard panel members say, I want to see a 2-year-old there, I'm like why, because you're not a child psychologist, what are you going to assess? Attachment, how you going to do that?

(Joan, interview)

Joan refers here to the concept of attachment, a psychological theory that has been powerful in shaping understandings of emotional and social well-being and development in children. Attachment theory is the idea that who a child seeks proximity

to, or not, when upset or threatened, can provide information about the strength of that child's relationship with a parent, and also about the quality of that child's future relationships (Bowlby, 1969), however, its application and use, particularly within social work settings, has not been without criticism (White *et al.*, 2019). Joan's comment can be seen to mirror this in questioning the extent to which meaningful conclusions from a short, single period of child-parent interaction in a formal, unfamiliar setting can be drawn by non-experts. Nor should attachment be considered the sole determinant of a child-parent relationship (Aldgate *et al.*, 2006).

8.2.2 Differences in Interpretation

How panel members constructed meaning from the same behaviours they observed also varied. In one hearing, panel members drew quite different conclusions from a teenage boy's demeanour and interactions. Sitting with the hood of his sweatshirt up, he avoided eye contact with the panel members and engaged only minimally in conversation. The three panel members took meaning from this in quite different ways. For Denise, this indicated that the boy did not want things to change, or to engage in supports. She reflected afterwards:

So if he had come in, and he was, he showed some, that he was taking responsibility for his actions, that he was trying to get away from this associated peer group, which was very much played down in the reports, and by his family, if he came in, and there was any contrition, if there was anything about, oh my god, d'you know I've really made a mess of this, I need help to sort it out, but there was nothing. The only sentence we actually got out of him was, well I said about, you know you need to move away, come away from your peer group, 'I'm not gonna do that they're my friends!' that's the only sentence we got out of him. And, maybe he was hiding, he was scared, but we are not mind readers, so, unless somebody comes out with it, it's very difficult for us to deal with.

(Denise, interview)

Denise's interactions with this young person made it clear she did not view him as contrite or taking any 'responsibility for his actions', as already demonstrated in Chapter 6. Key to this was her view that if he was unwilling to stop spending time with

his friends then he was not serious about wanting things to change. Although Denise's interpretation and understanding of the centrality of peer relationships in adolescents and his motivation to change was challenged by other professionals in the room, it could be seen to inform her final decision not to continue the CSO, as she remained convinced that the young person would not engage with support.

Denise's colleague Joan offered quite a different interpretation of the young person's presentation in the hearing, however. She did not see him as lacking contrition but rather that he found the environment difficult:

You know, he wasn't being hostile, he was just, I think he was listening, but he was uncomfortable.

(Joan, interview)

In her interview, when asked about her views on what had shaped her decision-making (in her case, it was to continue the CSO and allow the young person time to engage with the new supports being offered) she acknowledged there had been differing interpretations regarding the boy's behaviour amongst the three panel members. She said she felt Denise had 'interpreted the boy's body language as hostility and rudeness, you know because he wasn't speaking back' but that in her view, both the young person's presentation in the hearing, and the wider issues with his decision-making and impulsivity, were issues affecting teenagers that panel members need to understand better.

This example was unusual in how differently the panel members interpreted the boy's 'views' about what he wanted to happen. Nonetheless, it highlights the complexities involved in how panel members understand what children and young people are communicating in hearings, and how individual knowledge, experience and understanding is used by panel members to draw quite different conclusions about children's 'views' from their behaviour and interaction.

8.3 Barriers to Participation

We have seen how panel members hear and make sense of what children and young people communicate in hearings. This section now turns to examine panel members' views on what wider barriers to children's participation in decision-making were

present. This section discusses panel member's beliefs about the social work role in supporting participation, structural features of the hearings system, and the interactional style of panel members.

8.3.1 The Role of the Social Worker

Despite the wish of panel members to see children and young people in their hearings, attendance is typically lower than desired. As noted in Chapter 4, children and young people were physically present in only 30% of the hearings observed in this study. This figure is largely reflective of national data on children's attendance, available since 2021, which shows 33% of children across Scotland attended their hearings in the period 2022/2023 (Lamb, 2024).⁴⁰

Some panel members felt that children and young people were excused too readily from attending their hearings on the basis that they might be distressed by proceedings. In Richard's view, social workers did not support participation meaningfully:

Richard: they usually duck out of it by saying it would be distressing, and so we don't have the child's views, we just have social work's view that the child would be distressed by being at the hearing, by talking about what the hearing is trying to achieve, and the decisions, if the child's not there we can't explain to the child what the decisions are, we have to rely upon the social worker doing that, and I don't have much of a confidence I'm afraid in that social work will carry that out rigorously. I think they will tend to duck it.

Carol: Why do you think that happens?

Richard: I think the social worker doesn't want to risk distressing the child. Especially by having to convey to the child that a decision has been taken which the child might not agree with. Since the child is typically often not notified, I don't know if you've noticed that on our arrangement sheets, but, it's all too frequent that the child isn't even notified that the hearings are even going on. Because it's assumed they're too immature to understand what's going on. But children

⁴⁰ Attendance data for 2022/23 was still partially impacted by Coronavirus (Scotland) Act 2020 provisions where the statutory duty for children to attend their hearing was suspended. This lapsed in October 2022.

understand an awful lot more than we adults give them credit for. And they're awfully interested in what's happening to them.

(Richard, interview)

Richard's comments suggest a lack of trust in social workers to support children and keep them informed about the discussions taking place and decisions being made, and that social workers seek to excuse children from hearings too readily because they want to protect them from distress, not just about what they might experience in the hearing but about how they would feel when decisions are being made that go against their wishes. In his comment 'it's assumed they're too immature to understand what's going on', Richard also indicates that he believes social workers struggle to recognise a child's competence and capacity. These comments reflect a wider criticism in the literature of children's agency and ability to participate being underestimated (Tisdall, 2016) and that meaningful participation can be compromised by conceptualisations of children as inherently vulnerable and lacking capacity (Barnes, 2012).

8.3.2 System Barriers

Other panel members shared Richard's desire to see children in person. However, they also felt there were some challenges inherent in the structure of the system which could pose a barrier to engagement and participation, and described different approaches to overcoming these. The expectation on children and young people to share their views in front of everyone in the hearing room was one issue believed to play a part in inhibiting engagement, therefore many panel members felt it was important to offer children and young people the chance to speak to the panel on their own. If a child speaks to panel members alone, then the panel chair must provide some sort of summary to any relevant person such as a parent, upon returning to the room.

Many panel members in this study believed that asking to speak to a child alone could support participation and made it a priority to ask children at the beginning of a hearing, feeling that this communicated that the child's views were the most important. Helen, however, was of the view that seeking the child's views at the end was more helpful as it gave the child an opportunity to offer an opinion on what had already been discussed without other people sitting there. In her view this ensured the questions

being asked of children and young people specifically related to the decisions they were being asked to make, or as she put it, ‘the two or three things you need to take a decision on, rather than everything else you’ve heard, you know’. Her comment also implies that some discussions with children can lack focus on the specific issues at play, something which is discussed later in this chapter.

The timing of the request, and how it was managed, appeared to be important, as can be seen in the following example. In hearing 8, panel chair Yvonne is seen to begin the hearing after introductions have taken place by turning to address the social worker first and asking for her recommendations. It was not until around twenty minutes later that she turned to address the fifteen-year-old boy and his parents to seek their views. Only at this point did Yvonne ask to speak to the young person on his own. He declined. While it is not possible to say what led to the boy’s refusal on this occasion it should be noted that in previous hearings, he appeared to be comfortable speaking to panel members on his own, as demonstrated in Yvonne’s question to him:

Would we be able to speak to you [alone]? We know you have spoken to panel members on their own before.

(Contemporaneous fieldnotes, Hearing 8)

As discussed in Chapter 6, how people are addressed in hearings, and the order in which this occurs, can vary, and this can be powerful in communicating who is deemed to be important in the decision-making process. In turning to the social worker first rather than the boy or his parents, it may be that Yvonne contributed to the boy’s decision not to speak to them alone. In Helen’s view, whether or not children agreed to speak to the panel members alone was irrelevant; the key part was for children and young people to experience being *spoken to* first, and for it to be emphasised how much the panel members wanted to speak to them, so that they were given the message about the importance of their views being heard. Helen felt that building in the opportunity for a child to speak to the panel on their own should be built-in to the hearings process as a standard feature. She talked about being taught in training not to phrase this as a question, as Yvonne was observed to do, but instead to say ‘I would really like to speak to you’, highlighting the importance of nuanced language use as noted in Chapter 6.

This desire to see children on their own also implies that panel members believe they will be able to get different information if family or other professionals are not present.

Helen articulated this in her interview, saying that she felt the presence of other adults known to the child always had some sort of impact on the child's responses. Donald shared this view:

So what we can't have is her being asked to speak in front of her mum and dad, because then, you know, she doesn't want to say well I'd rather be with dad than mum. You know, she doesn't, you want her to be in a situation where she's not upsetting anybody, you know in some ways what you want to be able to do is, find out what it is that, she wants, and if that's going to be best for her, basically, not say, the reason why we're deciding this is, because, that's what she wants, because then, that just adds to the conflict that's already there in the family, but, you know, we have decided, it's in her best interests, so it's not, she has said, you know, it's, we have said, and that, you know, takes, takes the, the element of her being in an awkward situation out.

(Donald, interview)

Donald's comment indicates an understanding of the difficulties children and young people may face in terms of conflicted loyalties and emotions in a hearing, and serves as a reminder that on key questions, giving a view may be far from straightforward for a child. Asking to speak to the child alone, and then carefully summarising her views in a way that shifts the emphasis of decision-making onto the panel members not the child, can offer a way to mitigate against some of these pressures. What may have an impact, however, is this information cannot be shared confidentially: panel chairs have a legal obligation to explain to a relevant person excluded from any part of a hearing what took place in their absence, so they can respond (Norrie, 2022). If children are aware that what is being discussed needs to be shared with family members on their return to the room, even if only in a general sense, then it may affect their confidence to speak freely.⁴¹ Therefore, asking a child to speak to the panel alone both presumes the child will have a level of trust in the panel members to manage the subsequent discussion with parents sensitively, and assumes that the parents would not question what had been shared by the child.

⁴¹ The legal test only allows for things to be kept confidential if disclosing any information could cause significant harm to the child (Norrie, 2022)

Regardless of the strategies adopted to seek the views of a child or young person there was recognition amongst panel members that a hearing can be a stressful experience for them, and that some children were unlikely to want to speak to panel members. Joan, much less convinced than Richard of the value of children attending their hearings, felt it was to be expected that children might be reluctant to attend hearings:

When we were at training last week, and people would always go on about there's not enough children at meetings, and things like that. I don't think we make meetings child friendly enough, and if I was a child's advocate, I don't know if I'd want to bring them, if they were seven, eight years old, its, it's not a pleasant environment for a child, it's, you've got adults who're upset, you've got conflict between people potentially, you know, no child wants to see their mum crying, you know, even if the people on the panel think that she's no right to cry, because she's not demonstrated any care, it doesn't matter, no child likes to see their parent upset, I think we need to be better about getting children's views without putting them in that situation.

(Joan, interview)

Joan's concerns about the potentially distressing nature of hearings are clearly articulated. Giving the example of a child being exposed to a distressed parent she questions whether this is an appropriate setting for sharing views. Parental distress in a hearing is not uncommon, as Chapter 7 demonstrated. Joan does not appear to be questioning the child's participation *per se*. Instead, she believes the current format of hearings is not conducive to supporting children to give their views in a way that minimises the risk of distress. Joan described being unconvinced by attempts to make children's hearings more friendly by improving the layout and presentation of hearing rooms, saying that this didn't alter the fact that the meetings still involved having '8 adults in a room and one child, you know'. Joan acknowledged that some children and young people can manage hearings well, but emphasised that it doesn't work for every child, and that she was 'not a strong advocate for children being there unless it's the right thing for them'.

Panel members interviewed in 2021 observed no increase in children's participation in their hearings when these moved online following the start of the pandemic. Ross and Alex said they felt it was good to be able to offer virtual participation to children

particularly if they were living away from home, to avoid them having to travel long distances, and Ross felt it was important to continue offering the option of virtual participation for children and young people in the future. Cheryl valued virtual participation because it allowed children to more easily opt in and out of parts of the hearing, but also noted that it made speaking to the child alone an impossible task as there was no guarantee someone else was not present in the room. Alex felt virtual hearings made it more difficult to get children's views because of the loss of body language and the difficulties in picking up the subtle cues that were required for the 'relationship chit chat' required to try and develop rapport.

8.3.3 Skills of Engagement

Another barrier to participation indicated in this study involved the ability of panel members to engage with children and young people and support their participation. That this was essential to effective participation was noted indirectly by Richard when sharing his view that 'lots of six and seven-year-olds can with good management of their hearing, benefit from being there'. We have seen from Chapter 6 what 'good management' of a hearing can look like when only adults are in the room. This section now turns to consider how well panel members are able to engage with and support children and young people.

Donald held an optimistic view of his colleagues' skills in this area, saying he felt panel members were 'generally very good with kids'. However, Helen was less convinced, saying there was a 'real skill in trying to actually engage with that child, to the point where you get a proper conversation out of them'. In her view, a children's hearing required a specific ability to communicate beyond that of everyday engagement with children and young people, sharing a conversation she'd had with a fellow panel member on the topic:

Even Ruth, who was a teacher, is a teacher, even she went, I'm able to talk to them in school, but trying to get a child to tell you something, that's quite difficult.

(Helen, interview)

Helen's point about the skills required to interact meaningfully with children and young people was also highlighted by Vicky, who discussed her concerns about the

engagement skills of some of her colleagues. In her view, some panel members struggled to demonstrate active listening in hearings:

You need to give people space you know, they might be prepared to come to the hearing, but they don't necessarily know what you're going to ask them. And if you ask them something, I've seen one panel member ask them something, and the child kind of, I don't know if they were thinking or pausing, and then somebody else asked them oh well what they meant was, and we don't know what they were going to answer, and we didn't get the answer. So, I think, that would be a really good area to have a bit of training on for people, listening. 'Cos if we talk about how we'll get the child on their own to talk to them we shouldn't be talking to them, we should be listening to them.

(Vicky, interview)

Vicky's comment shows how the skills required to engage with children and young people vary across panel members, and that these interactions are not always effective in supporting participation. She felt panel members needed to get better at listening, and also crucially, to appreciate that children maybe don't know or can't articulate how they feel about a situation:

Not enough children come to hearings, it's really difficult to get their views, and I would say, if they're brave enough to sit with us on their own, we're not good at listening to them. We speak a lot at them, we don't allow any kind of pause for them to reflect or collect their thoughts. We expect them, if you say, how do you feel about something, and we expect them to know. We don't always know how we feel about things.

(Vicky, interview)

This observation that 'we don't always know how we feel about things' serves as a reminder that children's views are not there to be discovered with the right question. Vicky felt that panel members who were good at talking to children were 'relaxed, and quite informal, without being patronising', and to ask direct questions such as 'Tell me what's going on for you here... how do you feel?'. In Helen's view it could also be helpful to try and get a more general sense of a child or young person by asking questions about what their daily life is like, not just their direct views on an issue, in order to get a better

sense of the child, but she did feel that by the end of the panel there needs to be more specific questions about the social work recommendations rather than just general 'everyday random questions, what do you like doing at school'. Helen's comment also touches on views shared by children and young people in previous research which showed that panel member questions about information already provided in reports were not welcomed by young people as they felt this simply implied their views had not been read (Creegan *et al.*, 2006).

8.3.4 Views Having Influence

Even if children were comfortable in the hearing, and panel members engaged well with them and were seen to listen to them, a final feature of the participation process is what Mary referred to at the beginning of the chapter as the need to be 'mindful' of children's views. This can be seen to reflect a key emphasis within the rights and participation literature; that not only should children be listened to but their views should have *influence*, where appropriate (Lundy, 2007). In this study however, the challenges to this were clearly identified by panel members. Vicky shared an experience of making a decision which was the opposite to what a child wanted, where the child was saying she didn't want to see her parent any more:

I do remember one hearing where there was a three-year-old who was with foster parents, and she was saying, I don't want to go to contact [with a parent]. And everybody was jumping up and down and saying, you know she shouldn't have to go to contact, and I wasn't sure about that because, three-year-olds like to have control of things, and we don't know why she didn't want to go to contact, nothing particularly traumatic had happened at contact, nothing particularly traumatic had happened with this particular parent. But the child had decided she didn't want the contact, and, people were talking about stopping it, and I wasn't sure about that. I didn't see, I didn't see what harm would come and I was aware that once the relationship had been lost it would be really difficult to build it again, so it can be difficult. When they're older, and you can speak to them on their own, they might explain you know, and their reasons might be reasons you know that you understand, or they might not be reasons you understand. But, when they're

talking, and little, you can't, you can't be sure that they're rational, that can be tricky as well.

(Vicky, interview)

There is much to unpick here. Vicky can be seen here to question the competence of the three-year-old in saying she did not want to see her parent, drawing on ideas from child development firstly in talking about a desire for 'control' typical of children at this age, and then later questioning the child's ability to be 'rational'. There is a suggestion that had the child been older, and been able to 'explain' the view, then that view would have been more likely to have been taken into consideration. There is also a focus on welfare – 'nothing particular had happened at contact' – rather than the child's right to express a wish. At the same time, Vicky shows her decision-making to be informed by an awareness of what could be lost for the child if contact was stopped, describing the challenges in supporting a child to rebuild a relationship. Whether this reflects only the relational challenges of reconnecting with a parent after an absence, or also a concern about how this would be promoted by wider social work and legislative systems, is not known. Nonetheless, it highlights some of the challenges in thinking about taking children's views into account and acting on them.

Concerns around welfare and children's competence were also very much at the forefront for other panel members, as demonstrated here by Joan:

What the child wants to happen, and why they want that to happen, now you can't always go with that, because they're a child and actually they don't always see the danger in a situation, they don't always see the future in a situation.

(Joan, interview)

Similarly, Donald stressed what he viewed to be a need to balance views and welfare, saying:

You can't always, you know, agree with them [the child's views], 'cos sometimes they're clearly, not in the child's best interests. I mean sometimes, you know the kids'll want to go with their dad because the dad will let them roam the streets all night whereas mum won't, you know, it can be like that.

(Donald, interview)

On occasion, sometimes the failure to demonstrate views having influence could be resource rather than welfare-driven. In his interview, Mark reflected on a hearing he'd been involved in where a set of siblings had asked to be accommodated away from their parent. He said that while the panel had agreed the home circumstances were not ideal, there was no other better alternative and ultimately a decision was made to go against the young people's views. This was a reminder of the challenges of insufficient resources often facing social work, with implications for panel members and their decision-making.

A final point made by Joan concerns the management of expectations in relation to the influence on decision-making. Touching on a number of issues raised in Chapter 6 regarding the importance of interaction and how children and families are supported through the hearing process, Joan recounted a hearing where another panel member 'spoke to the child so much that she raised this child's expectations, that yes, she was being listened to, but they were never going to go down the route that that child wanted... you have to manage that expectation, yes it's your panel but, we're not going to put you in the house with a schedule 1 offender'.⁴² Joan's description of children being encouraged to share their views without it being explained that they may not get the outcome they want shows a lack of regard for children and young people's participation and serves as a reminder that careful guidance and communication throughout the process is an integral part of supporting participation. George was one of the few panel members to explicitly acknowledge this part of the process when he described the importance of seeing children in their hearings not only to seek their views, but in order to explain *why* it might not have been possible to give regard to these views.

8.4 When Children are Absent

The preceding sections have provided an examination of how panel members 'hear' children when they are present in hearings. However, as already noted, children were absent in over two-thirds of the hearings in this study. National figures reflect the data

⁴² As noted in Chapter 2, a schedule 1 offence may include assault, sexual offence, ill treatment, neglect, exposure, abandonment, or any offence involving bodily injury in a manner likely to cause unnecessary suffering, under the *Criminal Procedure (Scotland) Act 1995*

from this project in that attendance can be found to increase with age (Lamb, 2024). That teenagers are much more likely to attend than babies or toddlers will surprise few people involved in the hearings process, but what it does mean is that consideration of how children participate in the decision-making process, even if absent, is essential. Despite the emphasis in the literature on children's rights and participation, much less attention has been paid to considering what meaningful participation for children might look like even if they don't attend their hearings. This section begins with a brief overview of the different ways in which children's views may be communicated in hearings by other people. It then moves on to consider panel members' views on these methods. In particular, it considers issues of trust, and how that affects how meaningfully a child's views are represented.

8.4.1 Mechanisms for Representing Children's Views in their Absence

Different mechanisms exist to ensure children's views are presented to panel members irrespective of face-to-face attendance. Aside from the option for other adults in the hearing to share a view on behalf of the child, there is an expectation that children's views should always be outlined in the social work report, although panel members often find this unsatisfactory, as highlighted in Chapter 5. Other methods of recording children's views at the time that fieldwork for this study was undertaken included a feedback form sent out by SCRA called a *Having Your Say* form (now called 'Hearing About Me'). Some local authorities were using apps which allowed children and young people to share their views digitally (in written form) with their social worker, other trusted adult, or independently. Children's Rights Officers and safeguarders, who can be appointed by panel members to seek the child's view about a particular issue in which there has been a lack of agreement or clarity on, may also be involved in seeking and representing the child's view. Children are also entitled to have their own legal representation in a hearing.

Since fieldwork for this study was completed, a number of changes have occurred with respect to how children and young people are supported to express their views. In November 2020 a Children's Hearings advocacy service was introduced under section 122 of the *Children's Hearings (Scotland) Act 2011* to offer children an additional way of being supported to express their views in hearings, meaning that panel chairs now have

a legal duty to inform a child or young person that they have the option to have an advocate present in a children's hearing to support them. This is not intended to be the main way of a child contributing their views but to act as an additional layer of trying to ensure children's views are sought and heard at hearings.

The enactment of the *Children (Scotland) Act 2020* also now allows children to share their views in the manner they prefer, with the presumption that the child is capable of doing so (with no age barrier) unless shown otherwise, and the concept of child's views has been widened beyond the provision of 'reasoned opinion' to recognise other forms of action and behaviour that may indicate a 'view' (Norrie, 2022). Finally, the Covid-19 pandemic led to a significant shift in how children and young people were able to express their views because of the move to virtual hearings, and blended hearings have remained an option despite the general return to face-to-face hearings (Porter *et al.*, 2021; SCRA, 2023a).

8.4.2 Deciding in a Child's Absence

Panel members expressed a range of opinions about the absence of children in hearings and the implications of this for how their views were presented. As already noted, Richard held clear views on the importance of children attending their hearings, and shared his concerns about making decisions in their absence:

I think it's always borderline inadequate that we take decisions in the absence of the child, because we can't put our possible actions to them and get any reaction to how they think about that.

(Richard, interview)

Here, he highlights his concerns about the inability to seek face-to-face feedback from children on different decisions. Vicky, meanwhile, reflected on how the dynamic of the hearing changed in the child's absence:

You feel a loss, and you can understand sometimes why they're not there, because it must be scary for them. You do lose a lot in terms of focus if the child's not there, and it does become, a little bit, more formal but that's okay, because you know it's not making anybody tense. But it can become a bit more, ticking the boxes, have we done this have we done this, you do sometimes get the Having Your Say form, but I

don't know how much they're actually worth. It is better if you can get them to come, I can understand why it's difficult.

(Vicky, interview)

Vicky's use of the phrase 'you feel a loss' can be seen to mirror Richard's feelings around the child's absence although unlike Richard she shows more sympathy for why children may not attend, acknowledging that it can be a scary or difficult or tense experience for them. Of particular concern is her description of the loss of focus on the child if not present: we have already seen in Chapter 7 that panel members need to be careful not to let sympathy for the parent overshadow a consideration of the child's needs.

Vicky's views on the inadequacy of the Having Your Say form to provide a meaningful representation of the child's views was echoed by Christine and Joan, both of them describing it as 'terrible'; Christine because it didn't provide much helpful information and Joan because the form often required an adult to support the child to complete them. For Helen, the issue of who was supporting the child to complete the form was a central concern. She said she wanted to see children and young people in their hearings because she often lacked confidence in third parties presenting child's views. Her concerns centred around the context in which these views might have been obtained, saying panel members had no way of establishing if, for example, parents were within earshot when the views were being shared with the social worker, or whether children were worried about their parents reading the form, and that this made her question how 'genuinely open' these views were.

In remarks that were prescient given the way in which hearings were to change following the start of the pandemic six months later, Joan questioned why greater consideration couldn't be given to more creative ways of children expressing their views, such as the use of different types of digital technology:

I don't know why we don't use social media, phones, a social worker, or a keyworker, a child videoing what they want to happen, you know, through chat, you know because they're so comfortable, if you put a camera in front of us we shrink away, you put a phone up in front of a kid and they can see themselves, say, you know, do you want to tell the panel, who, what, how contact is for you, and things like that, somebody I think is, a much, more child-friendly way of getting

their views.

(Joan, interview)

Joan makes the point here that using a phone or recording a child's views in some way is much more 'child-friendly' than something like the Having Your Say form, recognising the ease with which most children and young people use technology and social media. At the same time, this method could also be seen as a way of meeting a need in panel members to 'see' a child and hear a child talk, even if only on video rather than face-to-face, potentially attenuating the 'loss' of the embodied experience of the child in a hearing as described by Vicky.

Donald also felt the way in which children's views were sought and presented in their absence could be improved upon, and was critical of both the paper forms and apps used to share children's views. Like Joan he questioned why more innovative use of digital technology couldn't be embraced although also recognised the challenges involved with respect to the adults supporting this:

It's not done very well at the moment, and I'm not sure that the ideas that have been put forth at the moment are going to make it any better. I mean what we've got at the moment, if a child doesn't attend, if it's a child that's sort of old enough to have some views, you know you get a form, and it's basically, are you happy with where you are, is there anything you want to say, and you'll get, are you happy? Yes, you know, you'll get single word answers, and it doesn't tell you anything at all. They're now talking about, having an app that the kids basically sort of fill in, I think they're just, that's just doing the same thing but doing it on an app. I don't, I'm not convinced we're actually going to get any more, I think the idea of perhaps, the child recording something, a video and so on, that's worthwhile, but again, I mean, getting the child's views, it much depends on the person who's sort of trying to get the child's views. If there's a children's rights worker, can make a huge difference, 'cos children's rights workers are, you know, their job is to be able to do these sorts of things, and that's usually very helpful.

(Donald, interview)

Donald's comments explain why, in his view, the child's views as presented in the *Having Your Say* forms are inadequate in providing meaningful information about the

child. In this he echoes the views of his colleagues, as outlined above. Donald is also sceptical about a digital app contributing anything additional to the paper form. In saying this, Donald is highlighting the use of digital technology from the perspective of what it adds to his decision-making process rather than its value in supporting the child's participation. This raises serious questions about the merits of both apps and the feedback forms as a participatory tool; if panel members do not see that they offer much in the way of contributing to the decision-making process then this suggests children are being asked to engage in a way that does not support their views being listened to or acted upon (Lundy, 2007).

8.4.3 Representing the Child when Absent: Who Do You Trust?

Helen and Donald's concerns about who is supporting children to present their views echo the wider questions about professional trust, assessment and the impact of this on decision-making as discussed already in Chapter 5. This section turns to look more specifically at issues of trust in relation to the communication of children's views, and who panel members felt were most able to represent the voices of children.

The Importance of 'Independence'

As already hinted at in some of the comments in the previous section, panel members felt some individuals were better placed to seek and represent the views of children than others. The importance of a neutral, independent advocate for a child was a recurring theme. For Helen, reports from safeguarders which outlined the views of children and young people were valuable:

They're always quite useful the safeguarders, they've not really had any contact, they're not worrying about the relationship between social worker and family, and all the other dynamics, they're just, been there, met everybody, got the report, you know.

(Helen, interview)

This comment demonstrates a belief that safeguarders can focus more specifically on the child because they are professionally removed from the day-to-day complexities of supporting the family, unlike the allocated social worker. However, a safeguarder's lack

of relationship with the child, and often minimal contact with them – sometimes only meeting with the child on one or two occasions – is at odds with the consistent message from social work research of the importance of relationships in effectively representing children in decision-making (Archard and Skivenes, 2009; Winter, 2010; Munro, 2011). Yet in her interview, Helen went on to reiterate her belief that it was important for the child being able to speak to someone ‘who’s not involved, who’s not managing all the interpersonal relationships’.

This view was shared by Richard. He believed social workers struggled to adequately represent children’s views ‘because their workloads are still phenomenally high’, meaning that it was difficult for them to prioritise time with the child, and that their role in overall care planning could impact on the ability to be focused on the child:

Richard: the social worker of course has spent an awful lot of time writing the child’s plans, doing a lot of the paperwork, but they’re typically not prepared, in my view, to act as the children’s agent in a hearing. They’re almost too detached.

Carol: What about safeguarders, how have you found their input in terms of getting the child’s views?

Richard: Pretty good. Because they’ve usually got a reasonably narrow remit, for what is needed, and they’re almost conscious they have to balance talking to the adults and demonstrating the impact that’s had on their recommendations, with directly getting the children’s view, because that’s often what we’re sending them away with a remit to do. And maybe our social workers need more reminding that they’re representing children as well designing support for them.

(Richard, interview)

In this extract, Richard can be seen to recognise the demands placed on practice team social workers, but that their role involves competing priorities which can diminish their ability to adequately put forward children’s view, as the final line ‘and maybe our social workers need more reminding that they’re representing children as well designing support for them’, demonstrates. Like Helen, he saw safeguarders as being more able to fulfil this advocacy role without compromise. Richard went on to say that, even if a good relationship and good communication between the child and social worker existed, he felt the questions they asked children are inevitably framed and

shaped by their own professional opinion of the key options, which may not represent what questions panel members would want to ask. For Richard, it was about the specifics of the role, not about being a social worker. This was shown when he later went on to describe how even local authority social workers in different teams were 'usually more informative than the children's social worker teams'. Richard's comment that social workers from other teams can also offer an informed view emphasises his belief that the key issue is the competing demands of the children and families social work role rather than a lack of faith in all social workers.

Skills in Engaging Children

The importance of being able to engage skilfully with children was also emphasised by panel members. Mary had high praise for a children's rights worker who she described as 'wonderful', and very skilled at engaging with children and obtaining their views. She reflected on a hearing for a seven-year-old boy I had observed her participate in, in which the child was absent. In this hearing, the child's views were represented in reports by the social worker and the children's rights officer, and I asked Mary what differences she found in the reports:

Carol: could you say anything about the difference between the children's right worker meeting with him and the social worker?

Mary: they [social work] will put forward the child's views if they've got them. But a social worker coming to see you, I mean I don't know I'm not a child, but a social worker as opposed to, one of the children's rights officers we've got here [name] is just a wonderful [person]. And [they], I can just imagine [they've] visited this lad and asked all about what he likes and what he doesn't like, and, [they] would've played with him and [they] would've, because [they're that kind of [person]], so we had his views. And we had his views on contact, and we knew all about that. And, that's brilliant. That's exactly what we needed.

(Mary, interview)

Mary can clearly be seen to value the skills of the children's rights officer in working with children. She also later acknowledged her lack of trust in this particular social worker, saying 'we were a bit frustrated with her' and her planning for the child.

Nonetheless, her comments also speak to a wider scepticism of the ability of social workers to engage with children, as can be seen in the way she imagines as a child what it would be like to have 'a social worker coming to see you'. Mary goes on to provide further detail of these imagined differences in approach, beginning with a description of the children's rights officer:

Very child-centred. Very child friendly. [They] wouldn't go in and say I'm a children's rights officer you know, [they] would, I can just imagine [them] with this little lad who's only seven, coming in and saying, I'm here to see what you think about this, and that, and we'll play and we'll, you know. [They're] just a lovely person. So [their] whole approach is, would be very different from a social worker. And [they] would be able to get the views of a child a lot easier perhaps, than social work. Because they see that as a bit of a, I think a lot of kids think, oh, social work, this lad wouldn't because he's only seven, but, [the Children's Rights Officer] has just got that kind of approach with children.

(Mary, interview)

Mary's praise of the children's rights officer's skills in engaging children sits alongside a view that a social worker would not have the ability to engage a child in the same way, partly because there might be resistance to social work involvement.

These themes of the importance of being 'independent', of how social work is viewed by children and families, and the perceptions of social workers' skills in engaging children, were persistent. In follow up interviews with panel members in 2021, the role of the new advocacy service being offered to children and young people when attending a hearing was highlighted. Although set out in the *Children's Hearings (Scotland) Act 2011*, this service only came into force in November 2020. Panel members must now check that a child has been made aware of their right to an advocate to support and represent them in a hearing. This service was particularly welcomed by Cheryl and Eve. Cheryl described the input by advocacy workers as being 'excellent' in hearings, and said that the introduction of the service had helped her focus more on asking social workers for the child's views, and challenging them if no advocate had been appointed. When asked what made her value the advocate's input, Cheryl's answer was that 'an advocate is a completely independent person who's not part of his or her ongoing life'. Eve agreed, describing advocates as 'people who are experts in their field' who are 'trained to help

children and young people express their views'. She gave an example of one advocate using faces representing different emotions to gauge a child's feelings about issues, another who had obtained a seven-year-old's views during a walk. There did not seem to be recognition that social workers might also employ similar strategies.

Like Cheryl, Eve emphasised the importance of the advocate's role in being there to 'purely' act on the child's behalf, before adding that while she recognised that all professionals will want the best for a child, she felt a social worker's support wasn't always welcomed by a child or family member. There was recognition from Cheryl that some children might have a lot of different adults involved in their lives and may not want to talk to anyone new, and might be 'happy' to give their views to their social worker, but in general she did not see social workers as being able to fulfil this role adequately:

I think it would be very very difficult for someone in your position as a social worker, working with families, to give a completely independent, or completely, give the child's views completely independently without, you know, inevitably you could tweak it, angle it slightly differently to what the child is actually saying.

(Cheryl, interview)

Cheryl's comments mirror Helen and Richard's view that the social worker's role in care planning is likely to skew how a child's views are subsequently represented in a hearing, and Mary and Eve's view that social workers may not have the same skillset in engaging effectively with children and young people. These perspectives have significant implications for social work practice.

Solicitors

Panel members also discussed the ability of a solicitor to represent children's views. There were mixed feelings about this. Kenny believed there were 'some good solicitors able to put forward the child's views', while Mark, Ross and Michelle noted that even if a solicitor's role was to represent the parent not the child, their contributions could be constructive in terms of offering a measured view, supporting the parent fairly, and keeping the focus of discussion on the child's needs. At other times however, solicitors' contributions were viewed as being less helpful in keeping the focus on the child. Joan

and Richard both noted the infrequency of legal representation for children in hearings in comparison to parents and felt that this imbalance in representation could negatively impact on the child's views being prioritised in a hearing, as illustrated here by Richard:

Parents frequently have solicitors with them, the child is reliant upon their social worker. Very rarely that, very rare, in fact vanishingly rare I think, that the child is represented legally in children's hearings. And so, especially in lack of parental care cases, I feel hearings are weighted in favour of the adults, the parents, and we don't get enough balance of saying, you've got the right to be heard, but you haven't got the right to influence the decision that much. And, particularly, you haven't got the right to pick things apart as a solicitor, and delay the decisions that are necessary for supporting the child.

(Richard, interview)

Denise similarly felt that some solicitors would just 'argue absolutely everything', while George was one of several panel members observed reminding a parent's solicitor that the hearing was about the child's needs not the parent's, particularly around the issue of contact. Bruce was heard to comment one day that 'legal reps will to push things, especially on contact', as did Mark who said that contact was where the most difficulties arose in trying to keep the child's needs prioritised. Research on the role of the solicitor in children's hearings has identified similar benefits and challenges (Porter *et al.*, 2016).

Foster Carers

Some panel members were seen to value views gathered and conveyed by foster carers. In a hearing where two siblings were absent, Christine was observed telling participants, 'I was a bit concerned about getting the boys' views but the foster carer has represented their views'. In this hearing, the foster carer was observed to have a good relationship with both the children and their parents, and this appeared to contribute to the overall sense of trust panel members placed in her. Vicky, however, was less convinced. While recognising that it depended on the context, she said there could be concerns that the child will seek to please the foster carer, and 'will probably say to the main carer what they think they want to hear, a lot of the time'. This view was shared by Richard, who added that it was often difficult to get an 'unbiased story' from foster

carers about a child's wishes because of the impact of the child's relationship with the foster carer.

Despite this general desire for children's views to be conveyed by people other than, or in addition to social workers, professional trust in social workers representing children in hearings was not completely absent. George made it clear he felt social workers were generally good at getting children's views, while Cheryl, although making her preference for advocates clear, acknowledged there could be 'exceptions' where social workers were seen to represent a child very well:

One that stands out where a social worker had an extremely good relationship with this early teenager who was having a dreadful time in her life, really challenging and had obviously built up a really good relationship with the social worker, and hearing from the young person and the social worker I felt very comfortable with the fact that this social worker was the right person to do this for this young person.

(Cheryl, interview)

Similarly, Helen had strong praise for a social worker in a hearing I had observed. It was for a 16-year-old boy who did not attend the hearing. Helen said that the way in which the social worker had talked about the young person ensured 'the child's view comes through... you know it's somebody who really cares, it's not just somebody who's turning up'. When I asked her what made her trust this social worker she said:

I think she was very honest, she didn't come in and try and make it look like nothing was his fault or his responsibility, she understood the issues that he was facing, so she wasn't making that all sugar-coated, and I think that brought just a sense of honesty, you knew you got an honest reaction to it, she'd roll her eyes, and sigh, it was almost a very human response as opposed to coming in, and even, why hadn't he turned up, she knew him, she knew what he always does.

(Helen, interview)

Helen's response demonstrates how central the social worker's relationship with the young person was in convincing her to trust the recommendations being made. Despite presenting information that demonstrated some frustrations with this young person, this was perceived as an honest, relational response rather than a negative judgement of

the young person, and the overarching sense, both from Helen's interview and the interaction in the hearing itself was one in which all of the panel members recognised the social worker's knowledge of the young person and the affection she held for him, and as a result place trust in her ability to represent the young person. Nonetheless, Cheryl's description of social workers doing this as an 'exception' rather than the rule highlights the real challenges facing social workers in representing children's views in hearings, and that they are likely to need to work hard to convince some panel members of their relationship with a child and their capacity to advocate for the child.

8.5 Conclusion

Children's hearings should hear children, and as Mary says, be 'mindful' of their views in their decision-making. This chapter has explored how that occurs in practice. The findings from this study show that panel members want to see children and young people in their hearings but that over two-thirds of decisions are taken in their absence. Panel members felt social workers often asked for children to be excused from attending too readily, on the basis that they would be distressed by proceedings, but there was some recognition of how difficult an environment a hearing could be.

When children and young people were present in their hearings, panel members adopted different approaches to support their participation. Being offered the opportunity to speak to panel members alone, without parents or professionals present, was seen as important. Panel members varied in how they approached this. Speaking to children at the beginning of a hearing was felt to communicate to the child that their views were important, while conversations at the end were seen to offer a way of more meaningfully seeking the child's views on the discussions which had taken place in the hearing. And, as also highlighted in Chapter 6, nuanced interaction mattered.

Panel members made sense of children's communication in different ways. For some, their descriptions suggested they tended to see children's views as immutable entities, 'truths' waiting to be revealed by the right question at the right time. For others, there was more understanding of the contextual, shifting, relational nature of children's views and participation (Tisdall, 2016). Both verbal and non-verbal communication contributed to this understanding. Physically seeing a child in the hearing was important for many panel members because they felt it permitted greater insight into

the child's thoughts and wishes, not only through the questions they could ask directly but via observation of the child's non-verbal behaviours and how they interacted with their parents. However, caution should be exercised in drawing conclusions about the quality of relationships from brief, one-off interactions in such a specific context, as some panel members acknowledged. Research has shown that the best representation of children is within a trusting relationship between an adult and child (Archard and Skivenes, 2009). Also, differences in how these behaviours and interactions could be interpreted were evident, particularly with respect to older children, serving as a further reminder of the subjective nature of this 'information'.

The findings from this study also drew attention to differences in how 'listening to children' is conceptualised. Meaningful participation involves acting upon what a child says, where possible (Lundy, 2007). Panel members appeared cognisant of the need to act, where appropriate, in respect of children's views, but found the primacy of welfare often acted as a barrier to being able to give due weight to these in practice. This suggests that greater understanding of how panel members conceptualise 'best interests' would be beneficial, as well as how this is discussed with children. Tisdall (2018) argues that the 'best interests' principle is implicitly understood to mean what is in the child's future best interests, and that common sense assumptions about what this means for a child are at odds with academic research which indicates this is far less clear than might first appear.

It is a frequently voiced complaint from children that panel members don't 'listen' to them (Kurlus *et al.*, 2016). Part of feeling listened to involves how views and decisions are discussed with children. A number of barriers to participation were identified, including concerns raised by panel members about how social workers communicated decisions to children, as well as differences in how panel members themselves were able to engage with children.

Finally, a key point from this study is the importance of considering how panel member decision-making can take into account children's views when they are absent from their hearings. Panel members rarely seemed to find the views articulated in social work reports to be sufficient, as acknowledged in Chapter 5. Nor were the feedback forms provided by SCRA, or the information shared via apps, regarded as being adequate in conveying a clear picture of what the child's opinions were. There were frustrations

with how well the information in these forms specifically addressed the recommendations panel members were being asked to make decisions on, and also concerns about the legitimacy of the information provided because of who might have supported the child or young person to complete the form, and what bias or agenda may have been present. Participation can be seen to be compromised when children are being supported to express a view but this information is not seen to be relevant or meaningful (Lundy, 2007).

Related to this, an important consideration in ensuring children's views are engaged with in the decision-making process is thinking about who is doing the communicating. In general, panel members showed a strong preference for someone other than the social worker to obtain and present the child's views. Professionals such as safeguarders, children's rights workers, and more recently, advocates, were seen to: have a clearer remit to focus solely on the child; be free from the complications of being involved in wider care planning for the child; sometimes be more skilled and child-centred in their approach; and be able to present a neutral, unbiased perspective. In contrast social workers, and to a lesser extent, foster carers, were viewed as being less able to provide an 'objective' picture, although exceptions were present and although panel members may lean towards a general opinion of social workers as having less 'authority' to present the views of the child, individual trust in social workers was still evident in some hearings. These findings mirror previous research highlighting variation in perceptions of independence of different professionals in the hearings system (Hill *et al.*, 2017).

Obtaining the views of children and young people, and ensuring these views inform decision-making, is a complex process. The desire in panel members to see a child in person is a powerful one and sits alongside, or is perhaps indicative of, a lack of trust in 'second-hand' information, particularly from certain sources. Relational competence in both panel members and other involved adults such as social workers is indicated as a key component in meaningful participation of children and young people.

9 Discussion

In 1995, the Kilbrandon Report was reprinted⁴³. With it came a new foreword by Professor Fred H. Stone, one of the original Kilbrandon Committee members, in which he stated that the intention of the Children's Hearings system had been to:

provide the necessary conditions for satisfactory assessment and appropriate disposal, namely; an informal, relaxed setting, with reasonably skilled interviewers provided with reliable background information, with adequate time to promote effective communication between all concerned, and especially, an atmosphere conducive to the child's participation.

(Kilbrandon, 1964, p. x)

Sixty years on from the original publication of the report, the findings from this study are striking in how they still speak to the challenges of the hearings system in providing these core conditions: valued information, skilled communication, and an environment conducive to participation.

This thesis offers new insights into the decision-making process. It addressed a gap in knowledge and understanding of how panel members, the lay volunteer decision-makers in the Children's Hearings system, make decisions for some of Scotland's most vulnerable children and young people. Utilising an ethnographic approach, it drew on observations of 67 children's hearings or pre-hearing panels and qualitative interviews with 20 panel members to explore how panel members experience the two key stages in the decision-making process; the information presented in advance of a hearing, and the discussion with the child, parents, social worker and other relevant people in the hearing itself.

Chapter 5 explored how panel members first make sense of the written reports and other documents presented to them, identifying features which support or act as barriers to understanding. Chapters 6 and 7 explored two key aspects of the face-to-face encounter, how panel members interact with participants, and the role of emotion. These chapters argued that the ways in which different panel members use language

⁴³The report was reprinted in 1995 primarily due to difficulties in obtaining a copy the original report (Kilbrandon, 1964)

and non-verbal communication to manage the hearing, and how they regulate their own emotion and those of others, are central features of the decision-making process.

Finally, Chapter 8 drew on themes from each of the previous three chapters to discuss what is deemed to be the central purpose of the Children's Hearings system; to make decisions in the best interests of a child while ensuring the child's views are taken into account. The chapter examined not only how children are supported to participate in their hearings, but crucially, in light of the number of children who typically do not attend their hearings, how views are communicated in their absence.

This final chapter brings these findings and a consideration of the literature together to consider what this means for panel member decision-making within the hearings system. The purpose of this research was to explore the following research questions:

1. How do panel members experience the decision-making process?
2. What do panel members find challenging about decision-making?
3. How do panel members account for the decisions they make, particularly with regard to birth family contact?
4. What leads panel members to agree or disagree with social work or other professional recommendations?

I present my findings in the context of these questions, highlighting my contributions to knowledge. The following sections concentrate on the first two questions. To avoid repetition, the third research question *How do panel members account for the decisions they make, particularly with regard to birth family contact?* is addressed alongside the second through a discussion of how panel members account for their decision-making around contact. The ways in which panel members account for the decisions they make with regard to contact can be seen to encapsulate key aspects of panel member decision-making more generally. The final question *What leads panel members to agree or disagree with social work or other professional recommendations?* has been answered across the first two questions more broadly in the way these sections discuss the key challenges of information, professional trust, and the role of emotion, and how these shape agreement or disagreement with recommendations. I conclude by discussing implications for policy and practice, offering some reflections and limitations on the research process, and exploring possibilities for future research.

9.1 How Do Panel Members Experience the Decision-Making Process?

In this first section, I argue that the findings from this study show that panel members experience decision-making as an overwhelmingly **relational** process, within which issues of communication, complexity and trust are central. I highlight the key findings, showing how they connect to or move beyond existing understandings of the decision-making process and theoretical ideas about judgement and decision-making. In particular, I note that while theoretical concepts in relation to judgement and decision-making have been explored more generally in relation to children and families social work decision-making (Taylor, 2012, 2017; Helm, 2016; Helm & Roesch-Marsh, 2017; Whittaker, 2018; Cook and Gregory, 2020), the findings from this study are important because they represent the first time that decision-making in the Scottish Children's Hearings system has been considered in relation to the wider judgement and decision-making literature. These findings are also significant because issues of communication, complexity, and trust are likely to arise and similarly affect decision-making processes in other child protection contexts. This may be especially true in cases involving lay decision-making or the participation of children and families in decision-making forums, such as in other statutory social work meetings in the UK and in international child protection tribunal systems (Forkby *et al.*, 2016; Pösö and Huhtanen, 2016; Svensson and Höjer, 2016; Skivenes and Tonheim, 2017),

9.1.1 Communication

Decision-making in the Children's Hearings system is conceptualised as an inquisitory, participatory process, with one of the key purposes of a face-to-face hearing being the opportunity for children and families to discuss concerns with decision-makers. Communication practices, in the form of information, language use, how panel members manage hearings, the role of emotion and the importance of face-to-face engagement, are central to understanding the children's hearings.

How panel members make sense of the **information** presented to them in advance of a hearing, as outlined in Chapter 5, is a key part of the decision-making process. Reports offer the opportunity to make sense of the issues facing a child without the same time constraints or emotional demands of the face-to-face hearing, in theory permitting the opportunity for more conscious, deliberate analysis (Kahneman and Tversky, 1974;

Finucane *et al.*, 2003). However, the process of information-sharing in hearings is far from straightforward, and barriers to understanding arise in a number of ways.

Panel members in this study often described experiencing a sense of information overload. This related to both the general provision of documents, and more specifically issues with social work reports. Frequently, panel members were critical of the clarity and organisation of social work reports, and the sheer volume of information contained within them, echoing findings from previous studies (Martin *et al.*, 1981; Hallett and Murray, 1998; Kurlus *et al.*, 2016). Differences between what social workers chose to include in their reports, and what panel members wanted or valued, were evident. Panel members sought more information about the child and the child's views, and much less about family history or the parents' background. This finding is consistent with other research identifying issues with the content and quality of social work reports for hearings (Kurlus *et al.*, 2016; Porter *et al.*, 2017). However, the absence of recommendations in social work reports, previously identified as an issue (Smith and May, 1980; Henderson and Hanson, 2012), was less frequently reported by panel members in this study. Recommendations were generally present; instead, there were differences present in how panel members interpreted information contained in reports.

Panel members recognised that sensitive information had to be presented with great care in reports, and there was some recognition of the need to 'read between the lines' in terms of understanding of the issues. Some topics had to be discussed very sensitively in hearings, or not at all, to avoid disrupting delicately balanced relationships. At times however, panel members would report that the information provided to them did not appear to support recommendations, or that it could feel one-sided in its presentation. There were occasions where information social workers had provided as evidence for a recommendation was openly disputed, as in Chapter 7 when panel members were seen to question whether accounts of children being upset after seeing their parents were a valid reason to decrease contact. This finding reflects the complexities and contestations in the evaluation of contact well known in the wider literature (Moyers *et al.*, 2006; Loxtercamp, 2009). This variability in interpretation occurred not only between panel members and social workers, but between different panel members, underscoring the different knowledge and experience each panel member brings to the

table, something which has long been acknowledged (Asquith, 1983; Martin *et al.*, 1981). From this perspective, written communication is not just merely an issue of quality, content, or transmission of information, but a much more complicated task, as research on reports in criminal justice social work presented in court has also shown (Tata *et al.*, 2008). How children and families are socially constructed in reports, what is discussed, or not discussed, and how this is understood by panel members has been shown in this study to be an important, but under-explored area of panel member decision-making.

Variation in **language practices** was also a key feature of the decision-making process. Chapters 6 and 8 demonstrated the challenges facing panel members in their use of language and their style of interacting with children and families. Despite recommendations in both current panel member guidance (CHS, 2022a) and existing literature (Hallett and Murray, 1998; Griffiths and Kandel, 2000a; McGhee and Hunter, 2011; Kurlus *et al.*, 2016; CHS, 2022a) that ‘everyday’ language should be used and unnecessary legal terminology, jargon and formal English avoided, there was persistent evidence of the latter occurring. Language use was also occasionally observed to be negative in tone or disrespectful to children and families, as shown in Chapter 6 (section 6.1.1). Language that is labelling stigmatises individuals and fails to provide the detail needed for nuanced decision-making because the specifics of an occurrence or viewpoint are obscured (Hall *et al.*, 2003; Dyke, 2023).

Panel members also expressed concern that the use of more negative language by colleagues not only inhibited communication and understanding in a hearing, but potentially reflected a disguised or subconscious superiority towards children and families. This, alongside the recognition by some participants of the imbalance in many hearings around language use and the ability to express oneself, suggests there needs to be a more robust focus on communication practices within children’s hearings.

Irrespective of intentionality, language use that poses a barrier to understanding has long been recognised as exclusionary, and serves to perpetuate inequalities (Labov, 1982; Arnold and Faudree, 2019). Psycholinguistics research has shown that the way people speak can lead to erroneous assumptions and stereotypes being made, and that the impact of language on social interaction and experience, particularly in relation to who we trust, or don’t, is often under-estimated (Kinzler, 2021). A growing body of

work looking at the use of conversation analysis in social work research shows the gaps that can exist between aspiration and practice reality in terms of communicative practices (Flinkfeldt *et al.*, 2022). This highlights that even if unintended, discrimination can occur, and that there is a need to more closely examine language use in hearings.

The process of **managing hearings** was another factor recognised as being important in the decision-making process, as discussed across Chapters 6, 7 and 8. Chapter 6 showed that effective chairing requires a high level of skill to ensure meaningful participation. Variations in interactional style and approach were observed, including how hearings were opened and closed, how turn-taking was supported, how legal terminology and processes were explained and how participants were guided through proceedings. Whether it was the parents who expressed difficulty understanding what was being communicated (Chapter 6) or the teenager who responded more positively to a less interrogative approach (Chapter 8), there was evidence that the interactional styles of panel members affected levels of engagement and comprehension. These findings are consistent with wider research on meetings which shows how interactional strategies can shape how a discussion unfolds (Wodak *et al.*, 2011). With respect to children's hearings more specifically, there has been a dearth of observational research. However, different styles of engagement were noted in early studies to affect decision-making (Martin *et al.*, 1981; Hallett and Murray, 1998), with a lack of engagement by children and parents in discussion viewed poorly and seen to increase the likelihood of legal measures (Smith and May, 1980). A poor understanding of proceedings is more likely to have a detrimental impact on participation and the opportunity to discuss concerns and share views, which in turn has implications for decision-making.

A key aspect of managing hearings and supporting participation concerned how panel members addressed those present. Differences in referring to someone as 'mum' rather than using their name, or the order in which people were addressed – whether someone started a conversation with a social worker rather than a parent – were observed, as discussed in Chapter 6. Panel members also varied in the level of eye contact they maintained with children and parents, or if they tended towards using 'you' rather than 'he' or 'she' when talking or giving decisions. How a person is addressed is crucial for navigating social interaction (Stivers *et al.*, 2007). The example given in the study by Cook (2015), in which a young person described feeling judged by panel members who

talked about him as if he were absent, suggests the ways in which people are addressed in hearings contribute to how included children and families feel in the decision-making process. The nuances of communication need to be given greater consideration if hearings are to become more child-centred and rights-respecting in terms of participation. These findings contribute to a body of work emphasising the importance of understanding how participation operates in practice (Ogle and Vincent, 2022; Toros and Falch-Eriksen, 2024).

As outlined in Chapter 7, **emotion** also played a role in shaping communication in hearings. For children and families, strong feelings could overwhelm them and affect their ability to participate in discussions. Meanwhile, panel members were required to manage both their own emotions and those of others. There was evidence of uncertainty amongst some panel members in how to respond to upset parents, resulting in communicative practices less likely to be successful in de-escalating heightened emotions such as the use of the phrase ‘calm down’. The skills involved in emotion regulation are discussed further later in this chapter.

The final point to be made here about the centrality of communication is about the value placed on **face-to-face communication**. Only around one in three children on average attend their hearing, as highlighted in Chapters 4 and 8. Older children typically attend more often, babies and younger children much less, and overall, their attendance falls short of what panel members would prefer. The absence of a child in a hearing was seen as a powerful loss by panel members who felt it impacted on the dynamic of a hearing by making it more difficult to keep the child’s needs at the forefront of discussions, and diminished decision-making because the child’s views could not be sought directly. Some panel members also felt that being able to observe non-verbal communication and interaction between child and parent could inform decision-making by providing evidence of relationship quality. This raises a number of concerns: while such interactions can be instructive, the risks of a ‘**snapshot**’ assessment are considerable in terms of the nature of the observational environment, over-reliance on attachment as a measure of the child-parent relationship (White *et al.*, 2019) and the potential for bias or mistakes as a result of non-expert intuitive judgement (Kahneman and Klein, 2009; Whittaker, 2018).

9.1.2 Complexity

In describing the centrality of communication and interaction in the decision-making process, another feature becomes clear: the **complexity** of the decision-making task. This section builds on what has just been discussed and offers a contribution to knowledge by connecting the findings from this study with key theoretical ideas from the literature on judgement and decision-making, emotional labour, and emotion regulation.

As this thesis has outlined, panel members must make sense not only of the written information presented to them in advance of a hearing but of the interactions with and between participants in the hearing itself. What has been shown is that both stages require making sense of information in the context of real-life conditions which typically necessitate a more intuitive approach to decision-making (Tversky and Kahneman, 1974; Klein, 1998; Gigerenzer *et al.*, 1999). Information may be insufficient, subjective, irrelevant, excessive or contested (Chapter 5). Time is limited; unless panel members find a way to defer decision-making, such as appointing a safeguarder, a decision must be made within the short window of around an hour with no scope to adjourn to prepare the decision and reasons (Chapter 6). Panel member decision-making can often take place in emotive conditions, placing additional demands on panel members to regulate both their own feelings and those of children and family members, usually parents (Chapter 7).

All of these features contribute to a decision-making landscape in which ‘satisficing’, or seeking good enough options, is likely to occur, a functional and adaptive response given the limitations of cognitive ability and the complexity of the decision-making circumstances (Simon, 1957). It is important to recognise that under these real-world conditions it is both rational and realistic that individuals rely more heavily on **intuitive** rather than analytical forms of decision-making, and as such, employ different strategies to selectively manage information (Gigerenzer & Gaissmaier, 2011). The dominance of intuitive thinking does not indicate the absence of analytical thought, but it means that attention needs to be paid to the strategies or heuristics that panel members employ to manage the decision-making task, and what the implications are for how decisions about children and young people are made. As discussed in Chapter 3, intuitive judgements grounded in skill and expertise may result in efficient and accurate

decision-making but can also lead to biases when heuristics are applied without sufficient knowledge, awareness or scrutiny (Kahneman and Klein, 2009; Gigerenzer and Gaissmaier, 2011). Panel members therefore face particular challenges in the decision-making context of a hearing because while they may hold relevant professional or personal experience, unlike social workers, lawyers or other professionals involved in the system they are not expected to be 'experts' and do not have the same shared professional knowledge base. They also lack the same opportunities to learn from the outcomes of their decisions, a key condition for the development of skilled intuitive judgement (Klein, 1997; Kahneman and Klein, 2009).

This finding, that decision-making in children's hearings relies on intuitive as well as analytical judgement, makes a unique contribution to a growing body of work aimed at developing a clearer conceptual understanding of processes involved in child protection judgement and decision-making. It also adds to a body of research seeking to understand lay decision-making in tribunal systems more generally. Lay decision-makers in other legal settings have been both criticised for their lack of authority, and valued for bringing a more independent, less legalistic perspective to proceedings (Ivkovic, 2015; Hans *et al.*, 2024). The findings presented in this study show that when considering the contribution of lay decision-makers, the decision-making context is of central importance. The layers of complexity in the decision-making process, including time pressures and incompleteness of information, impact on a panel member's evaluation of recommendations and need to be taken into account when deciding on the value or otherwise of lay decision-making.

Emotion adds a further layer of complexity to the decision-making process. Although other studies have touched on emotion as a feature of hearings (Smith and May, 1980; Martin *et al.*, 1981; Hallett and Murray, 1998; Kurlus *et al.*, 2016; Hill *et al.*, 2017; Whincup *et al.*, 2019), it has until now not been fully explored in relation to panel member decision-making. Chapter 7 shows that panel members are regularly required to manage their own and other's emotions in a hearing, confirming this as a key, but previously neglected, feature of the decision-making process. Some aspects, such as the role of sympathy on panel member decision-making, have previously been raised as a concern by other professionals involved in hearings (Martin *et al.*, 1981; Hallett and Murray, 1998; Kurlus *et al.*, 2016; Hill *et al.*, 2017). The findings from this study confirm

for the first time that panel members themselves acknowledge the challenges of managing an array of emotions.

What does this mean for panel member decision-making? Evidence from the wider judgement and decision-making literature suggests that feelings such as sympathy can act as a source of unwanted bias (Slovic *et al.*, 2005). However, it is important to note that emotion should not automatically be viewed only as detrimental. Research in neuropsychology argues that emotion is a key driver in decision-making and that without it, individuals would struggle to reach any decision (Damasio, 1994; Lerner *et al.*, 2015). Emotions shape how individuals interpret information, and what information matters. They have been shown to act as a shortcut to evaluative judgements, and to underpin intuition (Finucane *et al.*, 2000; George & Dane, 2016; Duke *et al.*, 2021). The positive role and value of emotion in decision-making was also recognised by panel members in this study, in the ways that they described ‘needing’ to feel emotion to do the job well.

The accounts offered by panel members with respect to emotional experience and the observations of hearings in this study align with general psychological understandings of emotion (Barrett and Bliss-Moreau, 2009; Lerner *et al.*, 2015). Observations and narratives from panel members indicated emotional experience occurred which could be experienced as both positive or negative. These characteristics of emotion have been shown to differentially influence judgement and decision-making, with negative valence often having a more adverse effect on cognition (Lerner *et al.*, 2015). For panel members, what appeared important in managing emotion as a potential source of bias in decision-making was being cognisant of the emotional nature of hearings, and recognising the need to employ strategies to manage this. So, while there was acknowledgement by some panel members that feelings of sympathy could sway decision-making, there was also evidence of panel members working hard to avoid this and instead trying to keep the child’s needs, not the parents, at the forefront of decision-making.

These findings are consistent with wider research on emotion, and emotion regulation, which indicates while emotions may make it more likely that we respond in certain ways to a given situation, this is not a given, and that our emotions can be managed and regulated (Gross, 2014). This has important implications for decision-making. Seo and

Barrett (2007) argue that individuals vary in how aware they are of their feelings and their ability to regulate their emotions, and it is this ability, rather than the presence of the feelings per se, which determines the degree to which emotion is likely to induce biased judgement and decision-making. The findings presented in Chapter 7 support this argument and suggest that how panel members **respond to and manage emotion** in oneself and others is of central importance. It is a difficult task, and requires balancing an understanding of why expressions of emotion are occurring, ensuring other participants do not feel threatened by this emotion, and regulating whatever feelings may arise in oneself. When parents' feelings in children's hearings were explicitly recognised by panel members, this could be seen to provide a level of containment and support which helped maintain dialogue and engagement. In contrast, when panel members appeared less able to respond confidently to dysregulated emotion in others, or struggled to regulate their own emotions, such as anxiety about how to manage the hearing, ruptures in communication occurred, and that this could interrupt proceedings.

These findings are novel in that until now, no research has examined the emotional labour (Hochschild, 1983) or the role of emotional regulation (Gross, 1998) in children's hearings. The social norms which shape how people present and interact in certain contexts arguably create certain rules about what displays of emotion are deemed appropriate in work or public contexts, and that effort is required to mask or change feelings not viewed to be appropriate in a given situation (Hochschild, 1983). While feelings of distress or anger in children's hearings may represent an understandable reaction to the enormity of the decisions being made, these reactions can also be seen to represent a violation of norms with the potential to provoke feelings of uncomfortableness and nervousness in others. From a psychological perspective, the skills and strategies required to manage one's own (intrinsic) emotional regulation or the emotional regulation (extrinsic) of others in a hearing then become highly relevant (Gross, 1998). These theoretical perspectives offer new ways of understanding why some panel members may struggle with how to respond to strong emotions, and provide an explanation for why panel members in early studies may have sought to avoid discussing difficult topics (Smith and May, 1980; Martin *et al.*, 1981; Hiddleston, 1982; Hallett and Murray, 1998). Overall, these findings highlight the complexity of panel member decision-making, demonstrating the need to consider intuition, emotion

and emotion regulation as inescapable features of the decision-making process and pointing to the need for skilled management in supporting participation and engagement in hearings.

9.1.3 Trust

Alongside issues of communication and complexity, **professional trust** was seen to operate as a kind of heuristic or mental shortcut for panel members in this study. Trust in social workers and their assessments was observed on an individual basis. Expertise or the ability to build relationships with children was recognised, and trust was evident in workers who had previously demonstrated their knowledge and experience to panel members. However, at a more general level, panel members were seen to question the 'objectivity' of social workers and seek information from other sources perceived to be more independent, to corroborate social work evidence, assessment and recommendations. This appeared more likely to occur when there was conflict in the process, and the presence of competing narratives, as Chapter 5 discusses.

A lack of trust between panel members and social workers, and a tendency to seek alternative assessment in addition to the social work report, has been well-documented in previous studies (Bruce and Spencer, 1976; May and Smith, 1980; Martin *et al.*, 1981; Hallett and Murray, 1998; Gadda *et al.*, 2015; Kurlus *et al.*, 2016; Hill *et al.*, 2017). This thesis offers two contributions to knowledge in relation to the role of trust. Firstly, it demonstrates that professional trust is a feature of decision-making by drawing on the observations and reasoning processes of panel members themselves rather than only through opinions expressed by others (e.g. Kurlus *et al.*, 2016; Hill *et al.*, 2017). Secondly, it identifies trust as a heuristic, or mental shortcut, used by panel members, and in doing so links trust to the wider theoretical literature on heuristics, biases and dual process models of decision-making, as outlined in the previous section. Trust as a heuristic was perhaps most clearly demonstrated in this study when a panel member explicitly described giving weight to a contact worker's assessment of contact because he knew she was unafraid to challenge social workers and had observed her do this in the past. In essence, the panel member trusted this contact worker's ability to form a view independent of the social worker's position, and that this independence was

important to him. Trust as a factor in decision-making was also reflected in the ways in which panel members valued reports written by safeguarders or children's rights workers because, unlike social workers, they were seen to be independent of care planning and not required to navigate complex relationships and competing role demands.

The desire for alternative viewpoints, not just as a way of increasing knowledge about a child or providing an additional perspective but sometimes as a preferred one, also exposes a clear tension between social workers and panel members in terms of the importance of **relationship-based practice**, as discussed in Chapter 8. What is seen as a central feature of social work (Howe, 1998; Trevithick, 2003; Ruch, 2005), and essential to representing children effectively in decision-making (Archard and Skivenes, 2009; Winter, 2010; Munro, 2011), is not always reflected in how panel members experience the role of the social worker in decision-making, and it has serious implications for how children's views are represented in their absence in hearings, as discussed later in this chapter. If social workers see their role as primarily one in which their relationship with a child is central, and believe they are in a strong position to represent their views and wishes, they need to understand that this is not always how they and their assessments will be perceived by panel members.

9.1.4 Summary

This study has demonstrated the relevance of three key issues in the panel member decision-making process: experiences of communication, complexity and trust. These findings are relevant not only to how decisions are made in children's hearings but are features likely to be present and to affect decision-making involving children and families across a range of other related contexts, including other child protection decision-making forums such as child protection planning meetings or looked after child reviews in Scotland and beyond (Scottish Government, 2023d). Similarly, challenges related to communication, trust, and complexity are likely to arise in international child protection legal contexts where the participation of children and families is expected, or where non-expert decision-making is involved (Forkby *et al.*, 2016; Pösö and Huhtanen, 2016; Svensson and Höjer, 2016; Skivenes and Tonheim, 2017). The findings presented here offer a more detailed understanding of these

participatory decision-making contexts in relation to child protection concerns, and also a basis for considering how changes or improvements to policy and practice might be made, as is discussed further in section 9.3 below. In particular, the findings underscore the need for more explicit recognition of the emotional labour involved in this kind of decision-making, alongside the skills required to regulate both one's own emotions and those of others.

9.2 Key Challenges

In the section above, I have argued that the panel member decision-making process is an inherently relational one, in which issues of communication, complexity and trust are fundamental elements. My next research question sought to establish if there were any particular areas or features of decision-making that posed a challenge. As there is some inevitable overlap between the previous research question and this one, such as issues with written information, I draw attention only to the areas not already discussed and acknowledged above.

9.2.1 The Decision-Making Model

The **format and duration** of hearings, where decision-making must take place within time-limited conditions, and the **delivery of decisions and reasons** in a clear and robust manner, were identified in this study as posing challenges for panel members. These are familiar issues for anyone working in the system and have been previously acknowledged in the research (Hallett and Murray, 1998; Kurlus *et al.*, 2016). The findings from this study also highlighted that **grounds hearings** present considerable difficulties for panel members, as discussed in Chapter 7. The problems associated with the heavily legalistic nature of grounds hearings has been acknowledged in the criticisms of legal terminology and processes more generally (Griffiths and Kandel, 2000a; Kurlus *et al.*, 2016) although primarily from the perspective of how children and families experience the process. This study adds to this body of knowledge in highlighting the emotional labour involved for panel members in reading out distressing information to parents when seeking to establish grounds, particularly when

these grounds often require to be sent to the sheriff for proof due to disagreement or the age of the child.

The publication in 2023 of the Hearings Redesign report, and some of the recommendations contained within, serve to acknowledge the salience of a number of the decision-making challenges identified in this study. Included in this report is a proposal that a short adjournment in proceedings should occur to allow panel members to discuss and reflect on the decision to be made (Hearings System Working Group, 2023). It also recommends complete removal of grounds hearings from the children's hearings system on the basis that the way these 'are currently established can feel transactional, adversarial, sometimes feeling like a criminal charge' and instead establishing these separately in 'a more relational way of working' (Hearings System Working Group, 2023, p.33- 34). Both proposals have been supported in principle by the Scottish Government, subject to further review, but no detail on the practical implementation of these proposals has at the time of writing been put forward (Scottish Government, 2023a). The findings presented in this thesis concur with the need for 'relational' ways of working as noted in the report. Regardless of who is supporting the establishment of grounds with children and their families, an essential component of doing this sensitively will still need to involve a consideration of the micro-level aspects of interaction as outlined in Chapter 6, and the ability to manage emotion in others, as discussed in Chapter 7. It is therefore essential that careful attention is given to the specifics of what it means to be 'relational'.

9.2.2 Birth Family Contact

Alongside these structural aspects of the hearings process, and the points already addressed in the previous section, panel members acknowledged that making decisions about **contact** could be challenging. This echoes previous research which showed levels of agreement between panel members and social workers regarding contact recommendations to be lower than with other areas of decision-making (Henderson and Hanson, 2012; Porter, 2017). While panel members have a role in holding social workers to account and ensuring their recommendations and assessments are robust, it is important to understand *why* contact poses such a decision-making challenge for panel members. Provision of **information** plays a key part. As already recognised, panel

members felt that reports often lacked a focus on the child. They believed reports did not provide sufficient evidence for recommendations about contact, nor did they adequately capture the child's views, both in general terms about seeing a parent and how they felt specifically about the social worker's recommendations. Varying levels of professional **trust** in social work assessments were seen in this study to lead panel members to question the objectivity of the recommendations around contact and the evidence which is provided.

Panel members' **emotions** were recognised to be a key feature of contact decision-making. Making decisions about contact between a child and parent can be a very difficult thing to do. The findings from this study show that sympathy for a parent could prove powerful, and require careful management in order to avoid a bias towards decisions which prioritised the parents' needs over the child, while delivering decisions in relation to contact could be very hard to do. As shown in Chapter 7, panel members can also seek to manage the emotional impact of the decision-making task by rationalising in ways which serve to minimise the impact of short-term decisions. Whether it is the potential for a 'second chance' to be given to a parent, or emphasis placed on the reversibility of a decision, these strategies may also influence decision-making. Previous research has also identified the presence of anxiety around decision-making, with panel members worrying about making decisions about contact which might pre-empt sheriff decision-making on permanence (Whincup *et al.*, 2019). Finally, a key challenge facing panel members in relation to contact was the desire to see and involve the child in the decision-making process, as the next section will discuss.

9.2.3 Hearing Children's Views

This final section looks at the challenges facing panel members in ensuring **children's participation** in decision-making, and obtaining their views. Panel members want children and young people to attend hearings, but, particularly for younger children and babies, their presence is not guaranteed, nor does it ensure participation and engagement. Children and young people were present in only 30% of the 56 hearings in this study, a figure which is reflective of national data (Lamb, 2024). Attendance increases with age, with babies lowest and teenagers highest, but even amongst 14–17-year-olds across Scotland in the twelve-month period between April 2022 and March

2023⁴⁴, no more than two-thirds attended (Lamb, 2024). This suggests it is vital to consider how children and young people are supported to engage and participate when present in their hearings, as well as how their voices are heard when they don't.

Findings from this study have highlighted some of the challenges involved in supporting children to participate in decision-making. Panel members wanted to see children but their skills in being able to support face-to-face engagement and what it meant to 'give a view' varied considerably, as shown in Chapters 6 and 8. Panel members acknowledged that there was a lot of skill involved in being able to support children to talk. Some were confident of their colleagues' abilities to engage with children, while others felt that panel members struggled to know how to listen effectively. These findings reflect other studies which have highlighted children and young people's mixed experiences of being listened to in hearings (Griffiths and Kandel, 2000a, 2000b; Creegan *et al.*, 2006; Kurlus *et al.*, 2016). There was also a view that non-verbal communication and interaction between children and their parents was instructive, with some panel members arguing that who a child chose to interact with in a hearing could provide valuable information, although others were more questioning of this 'snapshot' assessment.

When a child was absent, panel members often demonstrated a preference for non-social work assessments such as from a safeguarder or children's rights worker because they were perceived to be not only more 'independent' but also sometimes more skilled in interacting with children. In contrast, a social worker was often viewed as having too many different tasks to prioritise, making them less effective in being able to represent children's views well. This was the case even though safeguarders and children's rights workers may only meet a child once or twice in comparison to a social worker who in many cases is likely to have had more regular and prolonged contact. This preference for 'snapshot' evidence, and the risks associated with it, was acknowledged in Griffiths and Kandel's (2000a, 2000b) observational study of hearings, and is at odds with a wide body of work showing not only that children's participation is best supported through strong relationships (Archard and Skivenes, 2009; Winter, 2010; Munro, 2011), but that it should be understood as a process rather than a one-off event (Vis *et al.*, 2012).

⁴⁴ Most recent data available at time of writing.

While acknowledging that individual safeguarders and children's rights officers may have considerable skill in engaging with children, and that variability in social work practice exists, as in any other occupation, this tendency towards preferring other representation for a child ultimately has implications for the child's role in decision-making in the issues that affect them. If children's views are sought by a social worker but not valued by panel members then this diminishes the child's ability to participate and for their views to have influence (Lundy, 2007).

Adding to these difficulties for children in being 'seen' in the room if not physically present is the challenge for panel members in maintaining a focus on the child, not the parent. Panel members described a child not being in the hearing as a loss which could result in the views and priorities of parents dominating. This could also be exacerbated by panel members having to manage other dynamics in the room, as discussed in Chapter 6, or feelings of sympathy towards parents, as discussed in Chapter 7. Tisdall (2018) has argued, with respect to children's participation, that the focus should be on how they are provided with the necessary support to participate. This study shows a number of factors which impact on children's participation in their hearings, particularly when they are absent, and includes the needs to consider *who* is representing the child's views. These findings contribute to a wider body of work which has examined children's participation in decision-making across different settings and countries (e.g. Archard and Skivenes, 2009, Winters, 2009, 2010; McCafferty, 2017; Tisdall, 2018; Mitchell *et al.*, 2023).

9.3 Implications for Policy and Practice

The findings from this study have a number of practical implications for the decisions panel members make in the lives of children and young people. In this section, recommendations for policy and practice are made which aim to support the decision-making process.

9.3.1 Reports Matter

The findings from this study suggest that further examination of the provision and purpose of written information for a hearing is required. Firstly, there is a need to

explore the overall provision of documents in advance of a hearing. This needs to consider the experience for children and parents as well as panel members. Secondly, greater scrutiny of social work reports is required. Little is currently known about the support and guidance offered to social workers in relation to assessment and report-writing across the 32 local authorities in Scotland. Thirdly, there needs to be a focus on how children are represented, particularly in their absence, both in social work reports and other documents such as the *Having Your Say/All About Me* form. Based on the findings of this study, current practices are falling short of their intended objectives to the extent that children are being asked to share their views in a format that panel members consider to have little value.

The hearings redesign report acknowledges many of the concerns outlined in this thesis in relation to written communication and has recommended that a review be undertaken of current provision and practice (Hearings System Working Group, 2023). The findings from this study would support such an exercise. The redesign report also proposes the implementation of a standardised multi-agency report. Given that panel members have a preference for multiple perspectives to inform their decision-making, this suggestion might be welcomed. However, consideration would need to be given to how a single report, if coordinated by social work, might be perceived by panel members. The Scottish Government has agreed only to explore or consult on the recommendation at this stage (Scottish Government, 2023a).

The findings from this study have a number of implications for social work practice. Social workers would benefit from understanding how panel members digest and perceive their reports. Key points to cover would include: the gaps between the writer's intentions and the reader's understanding of a report; panel members' perspectives on the inclusion of family background information; the importance of foregrounding the child's views, especially in relation to the social work recommendations; and ensuring the benefits and disadvantages of different recommendations, particularly around birth family contact, are presented, not just the preferred option. Further consideration of how social workers present the views of children in written format is also required.

9.3.2 Interaction Matters

Current guidance for panel members highlights the importance of clear language use in hearings and supporting children and their families to participate in hearings (CHS, 2022a). However, the findings show that the use of formal language, jargon and legal terminology remain an issue which impacts on how children and families participate in the hearings process. Currently, the Children's Hearings Scotland Learning Academy delivers training to panel members in partnership with West Lothian College. The partnership would benefit from considering how training and development on these language issues can be improved.

Alongside this, a wider consideration of how panel members can be supported with their communication skills is recommended. The proposal put forward to professionalise the panel chair in children's hearings was turned down by the Scottish Government, meaning that for the foreseeable future, lay volunteers will continue to play a key role in managing hearings (Hearings System Working Group, 2023; Scottish Government, 2023a). The findings from this study point to a number of ways in which panel members' practice in this area can be supported.

There is also clear evidence that the role and management of emotion in hearings requires greater attention. Although advice is provided in the panel members' practice and procedure manual in relation to interactional challenges such as managing conflict and understanding one's own 'trigger points' (CHS, 2022a), the findings from this study suggest that many panel members lack confidence in knowing how to respond to this in practice. Similarly, there is a heavy focus in the hearings redesign report on the importance of ensuring 'trauma-informed proceedings' (Hearings System Working Group, 2023, p.157). This is reflective of a much wider discourse currently on the need for public bodies to operate in a trauma-informed way (Scottish Government, 2023c), but there remains much less knowledge about how this can be effectively incorporated into practice (Goodall *et al.*, 2023). The findings in this study which address interaction and the management of emotion offer a good starting point for thinking about how this can be implemented.

9.4 Reflections and Limitations

I believe that this thesis has demonstrated the benefits of employing an ethnographic approach to research. It permitted a flexible exploration of decision-making guided by existing research while enabling the identification of other relevant issues. It also identified key areas deserving of future study. Using ethnographic methods with vulnerable populations or on sensitive topics can often be viewed nervously by organisations when seeking consent (Hammersley, 2018), and a piece of learning from this study has been recognising this. However, the findings presented here support the value of ethnography as a research methodology.

There are practical and methodological challenges which impact on data collection and understanding in any research project, and this one is no different. Some limitations should be acknowledged. The Covid-19 pandemic significantly disrupted the research design of this study, as noted in Chapter 4. The inability to carry out further fieldwork at two additional hearing centres prevented the collection of further ethnographic data from occurring and the opportunity to explore similarities and differences across regional centres. It also disrupted the iterative process of analysis which is an important feature of ethnography (Hammersley and Atkinson, 2007). Additional ethical challenges were also created due to the decreased opportunity for anonymity and confidentiality when reporting findings across only one fieldsite rather than the intended three.

This PhD research was undertaken on a part-time basis. This meant that academic commitments always required balancing with work obligations, and there were different challenges to maintaining momentum and focus over an extended period. However, in light of the specific challenges posed by the pandemic, the part-time nature of this project was also a significant advantage in terms of the time it afforded to revise the research plan and undertake data collection.

Another limitation of this project which should be acknowledged is that in taking a broader approach to understanding panel member decision-making, depth was inevitably lost. I believe the four empirical chapters in this thesis would each be worthy of more detailed study, and would have benefited a narrower focus in terms of theory, existing literature, research questions and analysis. A lack of access to hearing reports also restricted what could be explored regarding written communication. However,

although I initially experienced this as limiting, I came to recognise that it helped in maintaining a focus on the panel members' perspective of issues.

Finally, while I have tried to offer a perspective on the experiences of children and their families in this study, their views were not sought directly, and this absence must be recognised. The project's focus was on panel members, but any research which addresses decision-making in the lives of children and families but does not offer their perspectives can feel insufficient. There were also ethical challenges involved in navigating informed consent from children and families, but I believe I navigated these as sensitively as possible given the constraints in place.

9.5 Future Research

I want to draw this thesis to a close by considering avenues for future research. There are a number of interesting possibilities. Exploration of the current provision of written communication, and how it contributes to the decision-making process is clearly indicated from the findings of this study. A more detailed examination of the reports themselves, and a more explicit focus on the journey from preparation stage through to the children's hearing itself, exploring the understanding and meaning of these from the perspectives of all involved parties would be of benefit to everyone involved in the system. Much has been written about social work assessment with children and families more generally (e.g. Holland, 2010; Milner *et al.*, 2020) and the GIRFEC policy framework for assessment of children is well-embedded in Scotland (Coles *et al.*, 2016; Scottish Government, 2022). However, there has been a lack of focus on actual reports for children and young people in Scotland. The exploration of pre-sentence reports in criminal justice social work has been detailed in comparison, and offers an example of how research could take this issue forward (Tata *et al.*, 2008; Tata, 2010, 2020),

This study has also highlighted gaps in understanding in relation to how micro-interactive processes shape engagement and support participation. Research on interactional processes and the management of emotion would be of value, not only in terms of supporting panel members but with respect to social work practice more widely. As noted in the section discussing implications for policy and practice, there are links to be made between these processes and wider discussions taking place regarding the need for public systems to be trauma-informed. However, the ability to recognise

what trauma looks like and the ability to respond to it in a sensitive and skilful way are two very different things, as the findings from this study have shown. As well as making the argument that further ethnographic research would be valuable in examining these interactional processes in children's hearings in more detail, if the option to record interactions was permitted then conversation analysis (CA) could offer another promising way of exploring the 'how' of relational, trauma-informed practice (Mullins *et al.*, 2022).

Finally, there is significant scope for further research to explore the ways in which children's views are represented in their hearings, both when present, and absent. Particular attention needs to be paid to who is advocating for a child and what influence that individual is perceived to have. It would also be instructive to examine more critically how children's views are *considered* in hearings and how these discussions are communicated *back* to children if they are not present. Lundy's (2007) model of children's participation offers a suitable framework with which to examine this more critically.

9.6 Concluding Remarks

This study has explored panel member decision-making in the Children's Hearings system. Using ethnographic methods, it has shown the centrality of information, interaction and emotion in the process, and has highlighted ways in which children and their families are both supported and inhibited to participate in decision-making. The thesis has shown how these findings connect to wider literature on judgement and decision-making, as well as demonstrating the value of employing ethnography as a research method. These findings have important implications for policy, practice and future research in relation to children's hearings.

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Appendices

Appendix A: Panel Arrangement Letter

| | | |
|---|------------------------------------|--|
|  | THE UNIVERSITY of EDINBURGH | School of Social & Political Science The University of Edinburgh Chrystal Macmillan Building 15A George Square Edinburgh EH8 9LD |
|---|------------------------------------|--|

A study is being undertaken by Carol Duncan from the University of Edinburgh looking at panel member decision-making. As part of the research, Carol would like to observe children's hearings and interview panel members.

This research will be undertaken in [REDACTED] between Monday 12 August and Friday 4 October 2019.


You may be asked if Carol can observe panel members in your hearing. It is your choice to decide if this is okay.

This study will be fully anonymised.


If you have any further questions, or you would like to know the findings of this research, you can contact Carol by e-mail at [REDACTED] or by telephone on [REDACTED].

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Appendix B: Waiting room poster – Centre A



The University of Edinburgh




Panel Member Decision-Making in the Children’s Hearings System

A study is being undertaken by Carol Duncan from the University of Edinburgh looking at how panel members make decisions. As part of the research, Carol would like to observe Children’s Hearings and interview panel members.

You may be asked if Carol can observe panel members in your Hearing. It is your choice to decide if this is okay.

All information will be fully anonymised.

If you have any further questions, or you would like to know the findings of this research, please contact Carol at: [REDACTED]



Appendix C: Participant Information Sheet (2019)



Participant Information Sheet

Project title

Panel Member Decision-making in the Children's Hearings System and Birth Family Contact.

What is this study about?

There is a lack of research which focuses solely on panel member decision-making, despite the number of changes to law, policy and practice which have occurred since the inception of the Children's Hearings System in 1971. Decision-making in relation to birth family contact has been identified as particularly challenging. Contact with birth relatives is of central importance to the increasing number of children in Scotland who are looked after away from home. My study aims to address these gaps in the literature.

I am undertaking this research for my PhD at the University of Edinburgh. My supervisors are Dr. Steve Kirkwood and Prof. Jane Aldgate. This project has been approved by the University of Edinburgh Research Ethics Committee. It is funded by the ESRC (Economic and Social Research Council).

What will happen?

My research will involve 3 different Hearing Centres across Scotland. I would like to spend 2 months based at your Hearing Centre and to ask you if I can observe hearings where birth family contact will be discussed.

In some cases, I may also ask you to take part in a one-to-one follow up interview regarding your experience of the decision-making process. You would be asked about:


- your thoughts on the hearing
- how you came to your decision
- what you were thinking about the case prior to the hearing
- your views on contact

The interview would be confidential. You would be asked if the interview could be recorded for accuracy and for subsequent use in my research. Recordings of interviews would be transcribed and analysed. Transcriptions and subsequent research reports would avoid the use of identifying details.

You would have the choice whether or not to respond to any question that is asked of you, and the right to request that any data you have supplied to that point be withdrawn. You may decide to stop being a part of the research study at any time without explanation.

You will be offered the opportunity to see a draft summary of research findings and to discuss these further with me. Findings will be presented within my PhD thesis and may be disseminated in articles and other academic and practice forums.

Appendix D: Consent Form (2019)



Consent Form

You are being asked to take part in a research study on panel member decision-making in the Children’s Hearings System. There will be a focus on how decisions are made regarding birth family contact. You will be asked if I can observe hearings in which you are participating in, and you may be asked to take part in a follow-up interview. The information you supply will only be used for research purposes. All data will be fully anonymised and other identifying details removed to ensure confidentiality. Information will be securely stored and accessed only by authorised individuals involved in this project.

By signing below, I agree that:

1. I have read and understood the participant information sheet provided.
2. I am voluntarily taking part in this project and I can withdraw at any time.
3. I have been able to ask any questions and understand I can contact the researcher with any questions I may have in the future.

Name of **Participant** Date

Signature

Name of **Researcher** Date

Signature

Further information

If you have any additional questions about this study you can contact me by email: [REDACTED]

If you would like to find out about the final results, please provide your e-mail address below:

.....

Appendix E: Interview Schedule (2019)

Interview Schedule (2019)

Introduction:

- Background/length of service
- Motivation for becoming a panel member

General:

- Experiences of becoming a panel member and making decisions
- What have the different challenges been?

Specific:

- Panel member reflections on the hearing(s) I observed them take part in
- How did you reach your decision / decision on contact?
- What were you thinking about the case prior to the hearing?
(views drawn from reports)

Additional prompts:

- Can you tell me about any other hearings that have stuck in your mind, and why?
- What helps/hinders panel members making decisions?

Appendix F: Email to Local Authority A panel members (13 September 2021)

Dear [Local Authority A] Panel Members

I'm writing to you regarding my University of Edinburgh doctoral research on panel member decision-making in the Children's Hearings system. In 2019 I spent two months observing hearings in Aberdeen, and some of you also participated in interviews as part of this study.

Although I had intended to carry out research in further hearing centres across Scotland, this was unfortunately disrupted by the impact of the Covid-19 pandemic. My research proposal has now been revised to take into account this disruption and the changes that have occurred. I would now like to concentrate only on your area but to take advantage of the unique opportunity to explore panel member decision-making from a pre- and post-covid perspective by carrying out some follow-up virtual interviews.

I hope that this revised proposal meets with your approval, and that you would be open to taking part in these interviews via Microsoft Teams. I would particularly like to speak with the panel members I interviewed as part of my initial research, but would also very much welcome other panel members who have been qualified from 2019 or earlier and who have an interest in taking part. You would be asked about your experiences of being a panel member since the start of the Covid19 pandemic and how this compares to decision-making before March 2020. I would like to hear your views on:

- the benefits and challenges of virtual hearings
- children's participation in virtual hearings and what it has been like to obtain their views
- changes in written reports
- birth family contact for children during this period

If you would like to take part in an interview for this research, or have any other questions about the study, please contact me directly via the following email address:

████████████████████

Best wishes

Carol

Appendix G: Interview Schedule (2021)

Interview Schedule (2021)

Introduction:

- background/length of service
- motivation for becoming a panel member

General (if first interview)

- experiences of becoming a panel member and making decisions

Post-pandemic experiences of decision-making:

- I'd now like to discuss your experiences of children's hearings since the pandemic started last March
- What have virtual hearings been like for you?
PROMPT - any benefits/challenges?
- Do you have any thoughts or views on children's participation in virtual hearings compared to face-to-face hearings?
PROMPT - have there been any benefits or challenges to obtain the views of children and young people during this time?
- What about obtaining the views of other adults in the hearing, such as relevant persons or professionals?
- Have there been any changes to written reports, and do you have any views on whether this has impacted on panel member decision-making?
- Has there been any aspect of decision-making that has been particularly difficult?
- Making decisions about birth family contact has in the past been identified as particularly difficult. Do you have any views on this?

Appendix H: Thematic Framework

| Code | Notes |
|-----------------------------------|--|
| Child's views | |
| Child's presence | <i>Child spoken to alone, changes in interactions between adults if child is present</i> |
| Child's absence | <i>How child's views are represented if absent from hearing, by whom, trust/subjectivity</i> |
| Child's views in writing | <i>How child's views are provided in writing in advance of face-to-face hearing, by whom, panel members' views on this, trust/subjectivity</i> |
| Missing information | <i>What is not written, or said, and why</i> |
| Participation | <i>Flexibility/rigidity of system, how to support engagement, suitability of setting, styles/approaches to communication, value of different methods of presentation: written, oral, virtual</i> |
| Interpretation | <i>Meaning of verbal/non-verbal communication, understanding child development</i> |
| Written communication | |
| Provision | <i>Quantity and organisation, distribution, length of reports</i> |
| Content | <i>Relevance, inclusion or absence of information, information or evidence?</i> |
| Presentation | <i>Clarity and organisation, strategies for processing information</i> |
| Understanding | <i>Making sense of context and issues, is reporting viewed to be balanced, were a number of perspectives offered?</i> |
| Face-to-face communication | |
| Language use | <i>Choice of words, how decisions are delivered, jargon and legal terminology,</i> |
| Non-verbal communication | <i>Eye-contact and gaze</i> |
| Interaction | <i>Use of second/third person pronouns, order of engagement with participants, guiding, explaining, impact of virtual hearings</i> |
| Snapshot | <i>Primacy of hearing interaction over reports, moment in time over-emphasised</i> |
| Emotion | |
| Managing own emotions | <i>Experiencing and managing feelings e.g. sympathy, frustration, impact on decision-making</i> |
| Managing emotions of others | <i>Responding to and containing emotions of others, balancing different needs</i> |
| Factors contributing to emotion | <i>Contact, grounds hearings, format and duration of hearings, speed of decision-making required/lack of adjournment</i> |

| Challenges | |
|--------------------------|--|
| Contact | <i>Trauma narrative, short v. long-term needs, impact on child, practicalities (duration/form/location/with whom), support and supervision (during and beyond contact)</i> |
| Grounds hearings | <i>Legalistic, first time in hearing, statement of facts, emotional impact, shame</i> |
| Structure of panels | <i>Composition, time, structure, lack of adjournment</i> |
| Decision-making | |
| Role of solicitor | <i>Advocating/explaining/guiding/supporting clients, contributing to delays, tensions in best interests – child or parent?, challenging social work, imbalance of legal knowledge between lawyer and panel members</i> |
| Knowing the law | <i>Legislative complexities and confusion, use of panel member continuity</i> |
| Role of reporter | <i>Prompting panel members (welcome/unwelcome?), source of legal and procedural information</i> |
| Professional trust | <i>Individual vs professional trust, rules of thumb, (perceived) objectivity, tensions</i> |
| Use of safeguarder | <i>Contexts of use, more information or nervousness about decision-making?</i> |
| Permanence agenda | <i>PACE, local authority variations</i> |
| Risk | <i>Risk, thresholds for intervention</i> |
| Resources | <i>Availability, knowledge, views on resources</i> |
| Panel member role | |
| Theatre | <i>Theatre/performative aspects of hearing and due process including 'sense of fairness, challenging social work'</i> |
| Arbiter | <i>Arbiter, mediator? Desire for consensus?</i> |
| Knowledge and experience | <i>Training and learning, background experience, interpersonal skills, knowledge of issues</i> |
| Learning about outcomes | <i>Challenges of learning about outcomes of decisions</i> |

Appendix I: Visual Mapping – Analysis of Child’s Views

