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“You’re not to speak unless you’re spoken to”: parent voice in public law proceedings in England and Wales

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ABSTRACT

Recent policy rhetoric underlines the value of listening to those with first-hand experience of the family courts to better understand how the system could be adapted to benefit parents’ participation. This paper examines the participative experiences of 28 parents who were involved in recent care proceedings in England and Wales, with a focus on the procedural justice concept of voice. In-depth, narrative interviews highlight embedded, systemic barriers to parents’ participation, including the formality of legal language, procedure, and courtroom layout. Parents’ assessments of their legal representation and their interactions with the judge are important markers of whether they felt heard in the proceedings. The wider implications of findings are examined, including the gulf that exists in interpretations of ‘voice’ between professionals and parents as parties in legal proceedings. Adaptations to professional practice and court processes to better accommodate parent voice are considered.

KEYWORDS

Public law proceedings;
family court; parents;
participation; voice; justice
reform; England and Wales

Introduction

The President of the Family Division in England and Wales convened the Public Law Working Group (PLWG) in 2018 to address the steep rise in public law cases, in what has been described as a highly pressured system that is working ‘well beyond capacity’, dealing with significant backlogs and the impact of Covid-19. Some of these same challenges were highlighted in a review of the family justice system well over a decade ago (Family Justice Review 2011). The wider and related issues in children’s social care have also been documented in recent reviews (Family Rights Group 2018, Public Law Working Group 2021, Independent Review of Children’s Social Care 2022), where recommendations include strengthening the capacities and professional expertise of local authorities to support families much earlier, including through involving wider family and kinship carers (Harwin *et al.* 2019, PLWG 2021, Harwin and Golding 2022) to avoid crisis intervention and the need for cases to go to court. However, where a court hearing is required, there is emphasis on increasing parents’ engagement in these proceedings. Parents’ experiences of judicial proceedings will affect how they view the authority of the court and the legitimacy of court decisions. It is also acknowledged that

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parents understanding of judicial proceedings and what is perceived to be their lack of engagement, can contribute to delays in the family justice system (Independent Review of Children's Social Care 2022). Practitioners are urged to communicate more clearly to parents and to reduce the use of legal jargon and there have been calls for a shift in the culture of the family court, away from often combative interaction to more co-operative ways of working among social workers, lawyers and the judiciary (PLWG 2021). This includes a recommendation from the PLWG to integrate into public law proceedings learning from family drug and alcohol courts (FDAC) as a means of improving parents' participation in court processes. FDAC public law hearings are based on a problem-solving court model and are designed to respond holistically to the issues that led to care proceedings (Harwin and Barlow 2022, Centre for Justice Innovation 2023). They are intended to be less formal than 'standard' hearings, offering consistency in the judge who oversees the case and more scope for direct interaction between the judge and parties. However, problem-solving courts remain atypical in England and Wales.

Bodies involved in devising care reforms place importance on better understanding parents' and children's experiences. The Independent Review of Children's Social Care (2022), for example, describes its work as 'rooted in human experiences' (p.12) and includes an 'expert by experience board' comprising individuals with personal knowledge of children's social care, such as parents, kinship and foster carers and young people with care experience. The PLWG (2021), in its best practice guidance for supporting families prior to court proceedings, recommends collaboration and co-production with families to identify issues and co-develop plans to support change.

The primacy of the child's welfare and interests, set out in the Children Act (1989), has arguably marginalised concern with parents' accounts of family court and the extant research evidence is relatively sparse (Hunt 2010, Berrick *et al.* 2019, Hunter *et al.* 2024, Mutual Ventures 2024). However, there are some common and consistent themes in this literature. It shows that parents find court hearings confusing, alienating and emotionally traumatic and that they lack trust in the processes and decision-making of the court. Virtual hearings – which have continued since the Covid-19 pandemic – negate the need to travel to court and can be less frightening for parents than attending in person; however, research (Ryan *et al.* 2020, 2021) highlights concerns about 'digital poverty' that affect parents' access to the necessary hardware and good Wi-Fi connections to attend virtual hearings, and the difficulties of ensuring confidentiality of proceedings and the safety of parties who attend online.

Interest in how lay people (parties, witnesses, defendants) experience judicial proceedings aligns with broader concerns about maintaining public trust in the justice system. 'Effective participation' in court and tribunal proceedings is considered an essential element in *access to justice* and the *right to a fair hearing* (Article 6 of the ECHR, now incorporated into UK law). It is 'expressed in statute, case law, procedure rules, practice directions and guidance – that people should be able to participate effectively in court and tribunal proceedings that directly concern them' (Jacobson 2020a, p. 1). Yet what this means both practically and personally for those going through the courts and tribunals is less clear.

Previous research exploring how judges and lawyers define the participation of 'court users' (Pearce *et al.* 2011, Kirby 2020, Jacobson 2020b) shows that legal professionals tend to articulate lay participation in quite instrumental and passive ways. For example,

professionals have described participation in terms of its contribution to effective and orderly hearings; the court user's mere presence at the hearing; and the availability of legal representation which professionally filters lay participation into legal language and concerns. There is also some focus on helping people to understand judicial or tribunal processes and on protecting their well-being during hearings (Pearce *et al.* 2011, Owusu-Bempah 2018, Kirby 2020, Jacobson 2020b).

Procedural justice (PJ) theory – which is closely bound with the concept of effective participation – offers more clarity and empirical evidence about what people seek or expect from legal proceedings. This foregrounds the importance of having a voice, a chance to tell one's side of the story and to feel listened to and considered in legal decision-making; being treated respectfully by legal professionals; the neutrality and transparency of decision-making; and trustworthiness (Tyler 2003, 2007, Jackson 2018). The presence or absence of these four elements has been shown to shape people's assessments of their interactions with legal authorities. When people are treated in a procedurally fair way – it is argued – they are more likely to engage and voluntarily comply with outcomes, even when these are unfavourable (Tyler and Huo 2002, Tyler 2003, 2007). There are, however, limitations to the evidence underpinning PJ theory, including critique about the lack of attention to wider social-economic and cultural factors that affect people's views and expectations of the justice system. This highlights a need to account for personal and community histories, experiences and influences that will impact expectations and assessments of legal authorities (Harkin 2015, Nagin and Telep 2017).

Mackenzie (2021) notes the expressive role of PJ in supporting social equality between citizens and institutions. PJ, she argues, communicates respect for citizens and acknowledges 'institutional power' and the need to keep that power in check by promoting 'processes that demonstrate officials' neutrality, trustworthiness, willingness to listen, commitment to justice, and concern for the welfare of those who appear before them' (p. 207). This is especially significant in the context of the family court with its powers to authorise state intervention into the private lives of children and families.

McKeever's 'ladder of legal' participation – based on Arnstein's (1969) conception of political participation – offers a way of assessing the nature and quality of participation and how well this connects to procedural justice principles (McKeever 2020). Based on research about the participative experiences of tribunal users (McKeever 2013, 2020, McKeever *et al.* 2018), the ladder reflects intellectual, practical and emotional barriers and enablers of participation. The lowest rungs – isolation and segregation – describe the experience of feeling excluded, including because participation is considered futile or where one feels peripheral to a process that is designed for legal professionals. Tokenism depicts participation that is stymied by insufficient or inaccurate advice and representation, that does not adequately address barriers to participation as well as various delays to decision-making and resolution. At the top end of the ladder, more positive experiences of participation include where there is good communication and understanding of everyone's role in proceedings and where court users are enabled to understand their case and are supported to have an 'effective voice within the legal process that relates to their social world' (McKeever 2020, p. 6). We use McKeever's ladder of participation as a basis to consider the participative experiences of 28 parents who were parties in childcare proceedings in England and Wales between 2019 and 2024.

While there is widespread agreement about the importance of voice in the context of procedural justice and its value to effective participation, there is limited empirical enquiry into how voice in court proceedings is understood and experienced by lay participants themselves, or their views about the adequacy of the processes through which they are permitted to deploy their voice. Kirby (2024) has noted the important contribution that qualitative research can make to better understanding the role of PJ in court settings and ‘the lived experience of those subject to authority’ (p.36).

We are using the term ‘effective voice’ (McKeever 2020) here to refer to parents’ opportunities to communicate to and feel heard by the court regarding the challenges they face and their views and concerns in relation to court decisions about their children’s care. For the parents in our study, telling their side of the story was not understood in terms of procedural fairness but as a personal and emotional need to be heard by the court, that was often frustrated by legal process. In this paper, we highlight common themes in parents’ accounts of attending the family court, whether and how they felt able to ‘have their say’ and the factors supporting or undermining this.

Methodology

We conducted in-depth interviews with parents and family members involved in care proceedings as part of an ongoing study into experiences of the law. The larger three-year study is funded by the Nuffield Foundation and examines how people’s perceptions and expectations of their legal rights and access to justice are shaped by wider encounters with the law and justice system over time. Our focus is on judicial proceedings in the family and criminal courts. The study is conducted in partnership with Revolving Doors (RD), a national charity which champions long-term solutions for justice reform. The research team includes peer researchers who have personal experience of the family courts and were involved in designing the interview protocol, co-interviewing and discussing the emerging themes in the early interviews.

Parent interviewees were recruited through voluntary sector organisations, a peer support group, via social media advertising about the research and snowballing through existing contacts and networks.

A narrative interview approach was used. This method encourages the interviewee to share their experiences via storytelling, focussing on a particular area of interest (Flick 2006, Presser 2009, Foxall *et al.* 2021). In this case the story is about their involvement in childcare proceedings. This is based on the idea that we can better understand and give meaning to experiences through storytelling (Foxall *et al.* 2021). There was a loose narrative structure for the interview, which included generative open questions about what had pre-empted court proceedings, experiences of attending court as a party to proceedings (in person or virtually) and the period after the proceedings had been completed. However, the interview was designed to offer parents space to talk in their own terms, and at their own pace, about their experiences of the family justice system and to focus on what was significant to them. While the interviewee maintains more control in the telling than in a more structured interview, ‘narrative probing’ (Flick 2006, Robinson 2023) was used to clarify issues or to seek further detail about aspects of interest, including observations about the court environment or online facilities, understanding of proceedings, views on legal representation and their interactions with the

judge. Core structured data were collected on interviewees' demographic characteristics, including gender, age and ethnicity.

Ethical approval for the research was obtained through the Law School, Birkbeck, University of London. The research protocol followed guidance on taking a trauma-informed approach to interviewing (Alessi and Khan 2023). This included designing the research protocol with the peer researchers, seeking advice from the community services that were supporting parents, about creating a safe space for interviews, and our research partner – RD – contacting parents pre-interview to ensure that they were ready to talk about their experiences. Parents were also asked if they wanted to speak to a support worker from a community organisation after the interview. This was offered as a post-interview well-being check and to provide an opportunity to discuss any issues raised by the interview. Interviews were conducted in-person or via MS-teams, depending on the preference of the parent. They lasted between one and two hours and were recorded (with consent) and later transcribed verbatim.

Analysis of transcripts

We conducted a thematic analysis (Braun and Clarke 2006, 2019) which entailed close reading of the interview transcripts by the authors in relation to the concepts discussed above and the development of themes and sub-themes associated with quality of participation and voice. The interviews offered 'thick description' (Geertz 1973) of involvement in the family justice system. However, they are also a personal narrative that draws selectively on experience, emphasising some aspects and leaving out others. We were asking parents to recall often traumatic episodes, and their re-telling will be influenced by factors, including their reinterpretation of events in the light of later experiences, and changing self-perceptions and, potentially, the repression of some distressing memories (Flick 2006, Bentley *et al.* 2021).

The interviewees

While this is a small interview sample, the findings offer valuable insights into the experiences of parents who have recently had to navigate the family courts. Parents comprised 22 women and 6 men, of whom 25 were the parents of a child or children who were the subject of proceedings and three were family members involved in proceedings to become a special guardian of a child relative. Seven parents were in their 20s; 12 were aged between 30 and 40 and nine were over 40 years at the time of interview. Four parents identified as Black, one as Black Mixed Race, and one as Asian, and 22 identified as White. Over a quarter (8) of parents revealed having had contact with social services and the care system as a child. Collectively, parents were involved in hearings concerning a range of orders, including supervision, care, special guardianship, adoption, contact, and emergency child protection. In two instances, proceedings were concluded with no orders issued by the court. Two parents mentioned voluntarily handing their children over to social services under a Section 20 arrangement and four parents had their babies removed shortly after birth. In two cases, the hearing concerned the revoking of an interim care order. Another parent had begun his contact with the family court as a party in a private law case that moved to public law proceedings. Mothers' accounts often

included experiences of domestic abuse from (ex-)partners – an important factor in the stories of 13 women. Substance misuse (7) and mental health issues (13) were regularly disclosed and often said to be exacerbated by the stress and anxiety of being involved in proceedings and their outcome. Recent research linking family justice and healthcare datasets in England and Wales has found that mothers involved in public law proceedings were eight times more likely to have experienced domestic abuse than mothers in the general population (Johnson *et al.* 2023) and the prevalence of mental health issues and substance misuse is high amongst this group (Pearson *et al.* 2022).

Results

This paper explores four core themes in relation to having a voice in proceedings, identified in parents' narratives about attending hearings. These themes concern parents' place or positioning in the hearing; how much they understood or were supported to understand and contribute to discussions that took place in court; how well they felt *their story* was represented by others, and specifically by their lawyer; and the extent and quality of their interaction with the judge. We highlight the variety of ways in which parents felt either heard or silenced during their encounters with the family court. The paper concludes by considering the implications of these findings for improving the parent voice in public law proceedings. All the names used in this paper are pseudonyms.

Parents place in court

Most parents had experienced both in-person and virtual hearings over the course of proceedings; only three parents reported only attending hearings online. Unsurprisingly, parents were fearful about going to court. Consistent with previous research, the formal layout and atmosphere of the courtroom tended to intimidate and highlighted parents' marginal place in the proceedings. Parents described feeling like 'an outsider', 'a bystander' 'in the background'. They sat at the back of the courtroom behind their legal representative and rarely had any opportunity to engage with the professionals 'up-front'. This 'background' status was replicated in virtual hearings, where parents were instructed to be 'on mute . . . unless you are getting spoken to'. Sometimes unreliable Wi-Fi connection created additional challenges with 'signals [were] dropping in and out, so you are not hearing fully what is going on'. Such experiences align with McKeever's (2013) lowest rungs of the participation ladder: isolation and segregation.

Despite the stated aspirations to make hearings in the family court less combative and more informal and collaborative, largely, they continue to be experienced by parents as 'nerve-wracking' events. 'You sweat, you shake, you feel sick'. One mother, Erin, described 'physically shaking, like, you could see it. I would be terrified'. Another, Keira, noted the emotional impact of attending a family court hearing: 'it was a very stressful time, a lot of stress. I was very tearful a lot of the time. My mental health was not good at all'.

Parents' understanding of proceedings

Parents are excluded from courtroom deliberations by both courtroom layout and the complexity of the language that is used. The discussions are between the legal

professionals, using complex terminology, which parents mainly did not understand, and were not helped to understand. McKeever (2013, p. 580) refers to the obvious power disparities in ‘invited legal spaces’ that ‘translate into an ability or inability to speak the language of law’. The issue of ‘legalese’ has been raised consistently – across jurisdictions – as negatively impacting people’s capacity to participate in court and tribunal proceedings that directly concern them (Hunt 2010, JUSTICE 2019, McKeever 2020, Jacobson 2020b). As noted by Stephanie of the judge in her case: ‘the way he spoke, I couldn’t understand, I don’t know what he meant. He would never explain on what he was talking about’. Claire made similar observations about the lack of support she was given to follow proceedings and to know when she might be permitted to speak or to ask questions: ‘So they forget to explain it to you, and you spend so long trying to understand what’s actually going on . . . you don’t even know what’s going on and you don’t know that this is your opportunity to say these things’. Jennifer described the challenges for her of this exclusionary and ‘different way of speaking’:

It’s a bit pomp and ceremony . . . I just remember sitting there, and I just looked at my solicitor, I was like, ‘What does that fucking mean?’ Now, I’m smart, but I’m obviously not able to follow, because it is a different language. I know it’s English, but it’s a different language.

The atmosphere of the courtroom is established through the layout, formality and legal jargon. This results in the self-silencing of parents who often felt largely extraneous to the proceedings that concerned the future care of their children.

I wasn’t even allowed to speak. I didn’t know what to expect. Nobody really told me anything . . . It was just horrible, and then you just really didn’t have a choice but to nod and agree really. You didn’t have much say of anything. All the control had gone. Your voice had gone. Everything. You just sat back, and best you could hope for is that if you do as you’re told things will work out. [Gwen]

Ade, a father, believed the presence of parents in family court hearings is tokenistic – a form of placation in McKeever’s participation ladder (McKeever 2013, 2020) – and that there is no authentic interest from the court in input from parents: ‘They don’t listen to parents anyway. They just want you to be part of the hearing . . . so they will be able to say that the parents are there’. Ade told us that a parent speaking at the hearing is considered disruptive to the proceedings and can result in judicial sanction. He describes parent voice as out of place, an aberration or irritant in the context of due legal process:

Anything you say at the hearing, then it will work against you. Because-

. . . I wanted to say [things]. At that hearing, I said, ‘What are you doing? Can’t you listen to me?’ Then they asked me to sit down, stop talking. . . the judge said, ‘Stop talking’.

Parents also described being talked *about* rather than spoken *to*. They are the subject of evidence being presented by others in court – by lawyers representing the local authority and the child’s guardian – regarding their capacities as a parent, including the outcome of various assessments and tests that they have been required to undertake. As Susan recalled: ‘You have got different groups of people talking about you, the solicitors, the psychiatrist but when am I going to be allowed to speak?’ Susan felt misrepresented and stressed the importance of narrating her own life story to correct various misconceptions of who she was ‘as a person’:

You are not being given the chance to represent yourself . . . You are letting other people who don't know you, talk on your behalf and say, 'Susan is A, B, C, and D'. It is like, well, yes, I have done certain things, but you are making it seem as if this is who I am constantly. I have also got these things that I am doing. I hadn't been given the chance to be able to express myself that way, which I thought was very unfair. So, it is very one-sided.

Some parents mentioned the prioritisation in proceedings of the child's best interests as a rationale for their marginal status. For example, Leona commented: 'I'm going to go there for them. Not for myself. I'm sort of invisible . . . I'm not there but I'm speaking on behalf of my [child]'. While the centrality of the child's welfare was not disputed by those we spoke to, it was evident that this can be experienced by parents as negating their right to have any say, especially when their narratives can be dismissed as unreliable or irrelevant to the proceedings (see below). Yet wider research on children's social care shows that involving parents meaningfully in decision-making can improve compliance and help foster better outcomes for children in the longer term (Stabler *et al.* 2019).

Participation through legal representation

Parents whose children are subject to care proceedings have access to legal aid to fund a lawyer. How parents view their legal representation is fundamental to their experience of participation. It was uncommon for parents to give formal evidence in court as this is largely covered in pre-hearing written statements. 'Parent voice' then is conveyed indirectly through their lawyer, and they are largely dependent on their legal representative to navigate and translate the legal complexities of judicial proceedings and to help rebalance disparities of power and legal knowledge between parents and state actors such as social workers and lawyers representing the local authority (Hunter 2007).

There were some recurring themes in parents' accounts of their legal representation that impacted whether they felt heard by the court. First, there was a common view amongst parents that they were further disadvantaged in proceedings by their reliance on legal aid – essentially magnifying what they already recognised as an 'inequality of arms' between parent and state. Having a publicly funded lawyer was perceived to adversely impact the quality of representation they received. This included how experienced their lawyer was: 'my solicitor, she was a paralegal, she was just a young thing, love her, she was really, really young, and she was nice, but . . .'; and the amount of time the lawyer could spend working on their case or explaining things to them, given the restrictions to funding for legal representation. As noted by Hattie: 'the solicitor gets legal aid so she's getting a lot less to work on my case than she is for someone that can afford her, so she's going to do, the bare minimum'. Parents often reported difficulties contacting lawyers for updates on proceedings:

I'd see my solicitor once, then they'd be on holiday . . . I was that parent that would ring up, every day, at 9 o'clock in the morning . . . I couldn't get through to them. And when I was seeing [solicitor] in court, it would be, 'Sign this piece of paper, we've done all we can', that sort of stuff, and then, 'I'll see you in court', more or less. And it'd be like, 'Well, not really, because I feel like I'm still not getting my say'. And then, when I lost my case, I was sat there like, 'Well, my solicitor's not listening, my social workers aren't listening, I've got no family, it's just me'. [Erin]

They commonly reported having very limited time for discussion with their lawyer before proceedings moved to court. As noted by Leona: ‘He got a brief statement off of me and then the next minute we are in the courtroom’.

Lawyers are expected to balance a service to their client with their duty to the court and the efficient running of the hearing (Pearce *et al.* 2011, Berrick *et al.* 2019), but parents often felt that their concerns and feelings were ignored by their lawyer. Whilst a lawyer’s professional knowledge about the potential outcomes of care proceedings will influence their legal strategy, this can be experienced as being dismissive or indifferent to a parent’s wishes or perspectives about the care of their children. This connects to parents’ observations (noted below) about their lawyer’s lack of robust challenge to evidence being presented about them in court. Ade’s perception, for example, was that his legal representative was working for the judge – ‘[I] now realised that [my] solicitor has to follow the instructions of the judge, not my own instructions. They can’t follow my instructions’.

This also attends to the translation of lived experiences into issues – and narratives – deemed relevant to the law and legal process (Smejkalova 2017, Jacobson 2020b, Grieshofer 2024). Being legally represented can be felt by parents as ‘undermining’ and ‘silencing of their voice’ (Jacobson 2020b, p. 130) as their ‘stories’ are pared down to their significance to the legal process. Lucy described her lawyer ‘shushing’ her in court when Lucy had wanted to tell her something that she felt was pertinent to discussions. Susan told us about her solicitor’s tactic of keeping everything ‘minimal and vague’:

... Just keep things at a minimum and not delve into things because that could potentially open up a whole other plethora of issues or whatever, but in my head, I was thinking, no the more detail the more background, the better, so they can get a true understanding of who I am.

Carla felt that as a ‘normal’ (non-professional) person in the courtroom, she was powerless to correct errors in personal information about her children that was being presented in evidence at the hearing:

Even in the reports and stuff, they got the [children’s] names mixed up because it’s an extremely busy place ... Well, you’re not allowed to speak. A couple of times, I tapped my barrister on the shoulder and whispered in her ear, and a couple of times she would just be like, ‘No, no’, because she was, obviously, speaking for me to the judge and, obviously, was saying it in the right context for the Family Court, because the judge doesn’t want to listen to normal people. They have their own language, don’t they, in court? [Carla]

These accounts highlight the disconnection between parents’ expectations of what their lawyer should address and how much scope within proceedings there is to present personal details about their lives or to focus on issues they deem important. In Carla’s case, getting her children’s names right is fundamental. Carla seeks to excuse this error, in noting how busy the court is. However, it can also suggest to Carla a dismissiveness and lack of care by the court towards her family.

What parents often wanted from the process was to have their stories heard by the judge. There were significant issues that they wanted the court to be aware of and that they considered to be crucial context to the situation they found themselves in. However, there were limited opportunities in proceedings to do this.

I've asked for many things to be said. Because if you've got legal representation, you can't say anything; they've got to talk on your behalf, and you can't just butt in and say, 'Listen. Hang on a minute'. So, you're listening, and you've told the solicitor to say certain things, and the solicitor is not saying these certain things that you've told them to say. You've written it down, in your final statement, or your first statement, or whatever it is, to be read out in court. [Andrew]

Nancy was a survivor of domestic abuse and expected her lawyer to challenge the portrayal of her in court, as a mother who was failing to protect her children. She felt the characterisation was simplistic and unfair, and wanted her lawyer to speak to the wider context, including the physical violence she had experienced, its impact on her and her efforts to escape her ex-partner. It was he who was culpable for this violence, yet it was she who felt punished by the court. Other women we interviewed raised this, noting that their experiences of domestic abuse were either ignored by the court or used as evidence that they were unfit mothers.

They don't respond how you want them to, to say, 'well, this is his issue, not the mother's. He should be taking accountability, not the mother'. They don't represent it like that. You want to say- how can I put it? You want them to fight your corner, and say, 'No. This is him. She went through abuse. You need to understand certain things . . . ' But they don't represent like that. [Nancy]

Parents also described lawyers making critical decisions on their behalf without giving them time to fully reflect. For example, Susan explained how she felt pressurised by her lawyer to agree to a temporary care arrangement for her child:

That decision for my [child] to go and stay with my [sibling] wasn't actually my decision. It was my solicitor that made that decision for me because I didn't know what to say . . . She called me on the phone and gave me five minutes, 'what do you want to do?' I am like, 'Er, er, this is something I need to think about and process. I can't just give you an answer just like that and then you just tell the judge'. That threw me big time.

Parents often felt that the evidence presented by the local authority or Cafcass was given more weight, and considered more credible, by the judge than any evidence presented by their lawyer. This made parents feel that their testimony was being ignored or certainly less valued by the court. Leona explained this as 'more one-sided than listening to the whole'. Stephanie described a lack of challenge from her solicitor on her behalf to evidence presented by social services:

So only social services are listened to, and I made it very aware to my solicitor that there were a lot of lies within what social services were telling the courts. It was just ignored. I wasn't listened to at all, and I think that there needs to be a time that a parent is allowed their say as well as social services. [Stephanie]

However, it was also possible to identify in parents' accounts the aspects of practice that made them view their legal representation – and in turn their participation in the hearing – more positively. These were related to the time – and care – given to parents throughout proceedings by their lawyer and is illustrative of McKeever's (2013) higher rungs of the participation ladder where people are supported or enabled to understand and engage. David, for example, commended his lawyer for phoning him regularly and helping him to 'break down all the legal paraphrases, as I don't really understand'. He also told us that his lawyer always made sure she was 'early before court, so she can talk to me

about x, y, z and then we are ... ready to fight together'. Likewise, Kiera noted her lawyer's regular support in explaining processes and paperwork: 'when I didn't understand the assessments that were getting sent to me, he would be over the phone explaining every single detail of everything'. She also noted her lawyer's regard for her personal safety in court when her ex-partner was present: 'When I went to a court case where my ex's whole family were outside the court case waiting, I rang [my lawyer] and [he] come straight out to get me which was really good. So, I felt like I was safe'.

As noted, assessments of legal representation were also linked to perceptions about the robustness of challenges made by their lawyer on their behalf and how accurately their lawyer conveyed their story and wishes to the court. Leona, for example, felt heard by the judge regarding her request for her two children to be adopted together, because – in her view – her lawyer had argued well on her behalf for this to happen: 'If it weren't for them arguing my case for them to stay together, they would have been separated from the get-go'. This was important to Leona's sense of justice and meaningful participation in the proceedings. While the Family Court is intended to be more inquisitorial than adversarial, Leona's story was heavily characterised by battle language as she talked about her lawyer 'fighting' for her. Such language was also a feature in Kiera's account about her solicitor's defence of her in light of negative claims and questions being raised about her capacities to parent:

My solicitor was always fighting against them [local authority] because they were always just out to get me, in a way, because ... I just felt like, because obviously I have special needs and mental health, they were always using that ... Saying that I've got autism and stuff and that I don't understand things and I won't understand my [child's] health conditions and stuff.

David, described how his lawyer had spent time with him before the hearing and in her submissions to the court had said his 'exact words- because she had written down word for word, what I was saying, literally word for word ... And it was represented and interpreted in a way where the judge was like, 'Yeah, I understand his point of view'.

The judge

The judge was a central figure in parents' stories about family court, with characterisations tending towards either a distant, hierarchical figure who had largely ignored them or someone who had given at least some consideration to their circumstances and views. Their treatment by the judge was a factor in rationalising the outcome of a hearing: 'It depends on the judge, how they're feeling on the day ... You're fucked if the judge doesn't like you'. Sometimes a judge's reputation was communicated to them before the hearing by their lawyer, such as when they were told they were 'lucky' to have a particular judge.

Parents recounted both judicial courtesies and slights and these were important in their reflections about their overall treatment in the family court. Judicial behaviour was a significant factor for parents' understanding of their role and place in the hearing. The judge could accentuate the formality of the court and parents' 'in the background' status in proceedings but they could also alleviate this. Billie talked about the requirement to stand when the judge enters the courtroom and their raised position as symbolic of their power over parents: 'we're their servants ... they're just silently looking around, like

judging you, or looking down on you. Because where they sit, it's higher up, even when you're standing'. Billie's observation captured both the literal and metaphorical position of the judge.

Mia observed of the judges she had encountered in the family court: 'they don't really interact with you so much, they interact more with the solicitors and the barristers. It's like they're not talking to you, even when they are talking to you'. This was also captured by David's description of the judge in his hearing, who checked with his lawyer rather than asking him directly whether he understood what was being said:

[The judge was] not pointing directly at me, but pointing at my legal team, to ask, 'Does he understand?' She turns around and asks me, 'Do you understand?' I'm like, 'Yeah, I understand' I'm nodding my head. Because obviously we're not allowed to speak in family court unless we're obviously instructed by the judge to speak. [David]

Susan was attending an online hearing while the judge and lawyers were in court, and the judge had asked her child's date of birth. Susan had wanted to answer his question, but the judge accepted a response from someone who was present in the courtroom. Although this was likely unintentional, it was significant to Susan's sense of her place and importance in the proceedings:

I carried this child for 9 months. I am sure I am the one who went into labour with [child] at 3 o'clock in the morning. Why am I not being listened to here? It is like this total disregard'. [Susan]

Aspects of judicial behaviour that helped to counteract some of the formality in court hearings included more personal remarks and humour. Gwen, for example, talked of a judge she had felt 'more relaxed with' as he was 'quite funny . . . , making a few jokes. Like when he was reading out their ages, because they're close in age [and] towards the end, he was like, "It sounds like a Thunderbirds countdown"'. This particular judge had also disclosed that he was from a large family, like Gwen's. To Gwen, this signalled his understanding and support of her in response to criticism from social services about the untidiness of her home.

Hattie told us that the judge had been the first 'official person' to mention the grief she and her family were experiencing as a result of her partner's sudden death, something she felt social services had failed to acknowledge in their assessments of her parenting: 'in his summation he said we have to acknowledge the tragedy the family went through and how much [I'd] turned it around. He was the first person to acknowledge that'. Leona remembered a recognition from the judge in an adoption hearing that she loved her children: '[The judge] was like I can tell you love your [children], and I can tell you didn't want this to happen. That's what I remember . . . It wasn't registering what he was fully saying but I remember certain bits'.

Parents were particularly attuned to judicial treatment of their lawyer. As noted above, they compared this treatment to how lawyers for the local authority and the child's guardian were received by the judge as one way of assessing the fairness of the hearing. For example, Lucy appreciated the judge in her case reprimanding the local authority's representative for needing more time: 'He said, "I suggest you need to go away, read through this. It's a cut-and-dried case. I don't understand why you all want extra time for stuff". And that just seemed really fair'.

The judge 'shutting down' a parent's lawyer, as in Imane's case, may relate to procedural rules about what evidence is relevant to and admissible in proceedings, but it is perceived by parents as the court failing to give time or value to their side of the story:

... every time my [lawyer] would say something, the judge would shut him down. She didn't even allow him to talk. And like, she kept saying, 'Oh, no, there was no fact finding made', about my ex being abusive, 'so, we can't bring that' [but] ... the local authority were allowed to use all the stuff ... So, it was a different rule for me and a different rule for them. [Imane]

Stephanie described the judge's 'lack of interest' in hearing from her lawyer about her circumstances: 'He didn't really care'. In Amber's experience, it was the judge who had prevented her lawyer from speaking on her behalf about her hopes to have her child returned to her care and how she was addressing the local authority's concerns:

My solicitor stood up and was explaining to the judge that I wanted my kid back and the reasons why. And the judge just point blank looked at her and said, 'I don't want to hear none of this. Do you really think I'm ever going to consider giving this lady her children back?' And I will never forget that. ... And then I was just in hysterics, because I was like, 'You're not even giving me a chance. You're not even listening to what my solicitor has got to say. That's just so not right. That's just so unfair'.

Amber had wanted the judge to hear that over a period of six months she had changed her life considerably:

I left the partner that they were blaming ... I had gone to all these parenting courses as well, to prove to them that I was willing to do anything they wanted. Like I would do anything in the world. I just want my children back.

Amber contrasted this first judicial experience with a second much more positive interaction at a hearing to revoke an interim care order concerning one of her children. Here the judge congratulated her on how much effort she had made to address challenges and concerns:

This time [a different judge] said to me, 'If we could bottle up what you're made of, what you've been through and how far you've come now, if we could bottle that up and sell it', she said, 'the world would be a much better place'. I was crying, because obviously I was just over the moon, that actually someone as high up as a judge has actually acknowledged all my hard work and everything I've done.

Whether and how a judge had spoken to parents or indeed about them was significant in parents' accounts of childcare hearings. The judge, in managing proceedings, also has the power to create more time and space for parent voice. We heard about parents writing letters to the judge. One mother, Erin, described writing and then reading out a letter in court at the hearing that granted the adoption of her children. This did not alter the outcome of the adoption order, and this was a hearing that Erin was not required to attend, but she chose to do so and felt proud that she had written the letter herself as a means of telling her story:

I basically gave them a letter ... saying I was naïve. I didn't have the right people around me, I didn't have the correct childhood to then navigate a good childhood for them, and I knew that the people that they were with were going to give them the things that I couldn't, like holidays, a good childhood, like, treats that people take for granted ... I actually stood up, and I actually had the letter in my hand. To be honest, I wanted to look the judge in the eye,

and, like, it was literally my life on a piece of paper . . . I wanted to look the judge in the eye, and obviously know that, obviously, what I'd said, I meant . . . I also walked out of that courtroom feeling like I was heard, but then it was also too late. [Erin]

Discussion

This paper presents the accounts of parents who have been parties in recent childcare proceedings in England and Wales. Its goal was to offer a deeper understanding of how the PJ concept of voice (being heard and having a say) is experienced by parents involved in public law proceedings but also to explore how parents define 'effective voice' (McKeever 2020). Susan's observation at the end of her interview – noted below – summarises some of the limits and inflexibilities of legal processes for creating any time or space for parents to contribute to proceedings and to raise the issues that are pertinent to their lives. The parents we interviewed often wanted more understanding from the court of their personal circumstances, and the opportunity to explain in court why they were in this difficult situation:

Just having more empathy and being more humanlike. I just think they were very much- not robotic, but it just was so like, too rigid . . . To have a say, to clearly state how you feel and maybe give an explanation as to how and why things got to where they got to . . . I felt it was very cold. [Susan]

There are several well-documented features of the court environment and legal procedures that act as barriers to lay participation in judicial proceedings. The courtroom layout, the formality of hearings and complexity of legal discussions are commonly mentioned as intimidating or alienating to the non-professional participant. This was emphatic in parents' accounts, and it leads to their sense of exclusion from discussion and their self-silencing.

Being legally represented – and, in the case of public law proceedings, having the legal costs covered by the state – is portrayed as supporting parents' participation and is essentially the means of conveying parent voice in proceedings. Parents' accounts, however, highlighted both the benefits and limitations of legal assistance. Lawyers can indeed function as a facilitator or enabler of participation in hearings (McKeever 2013, 2020) but they are also gatekeepers who can sustain informational barriers that can undermine parents' understanding and participation in the proceedings in a way that is meaningful to them. Lawyers may also inadvertently silence parents by strict adherence to legal procedures and what is legally relevant, neglecting to acknowledge the more personal stories that parents may want to present to the court. For parents these stories have important evidential value that can inform court decision-making. A minority of our interviewees described their lawyer as taking the time to translate complex legal details to them, to listen to and relay their views and circumstances and ensure they felt appropriately supported in court. However, more often, parents told of lawyers who were difficult to contact, failed to update them about developments in their case or to adequately explain the detail of proceedings, leaving them in a state of persistent confusion. While there are well-documented financial and workload challenges for legal aid lawyers (Onafuwa 2024), the connotations and experiences of legal aid for many of the

parents in our research was of representation that was inequitable, did not address their questions and concerns and was no match for the lawyers acting for state institutions.

The procedural justice concept of ‘voice’ had a very different meaning for the parents we interviewed than for the legal professionals. From a professional standpoint, parent ‘voice’ can be equated with being legally represented. It includes having the opportunity to submit evidence to the hearing via a written statement and verbally through their legal representative who will filter what is legally relevant to the proceedings. This may be perceived as a sufficient marker of participation and as fulfilling the court’s obligation to listen to parents. However, it neglects the more emotional and relational dimensions of voice.

Relational justice is an important constituent of people’s assessments of their treatment by legal authorities (MacCoun 2005). It extends the purview of procedural justice concepts, such as voice, to focus on the value of interpersonal interactions between court user and legal professional. Relational justice provides a more bottom-up perspective on how the quality and tenor of interactions can signify the dignity and respect given to court users and can help to promote their inclusion in proceedings and their dignity and self-worth (Meyerson 2021, Mackenzie 2021, Kong *et al.* 2025). Parents often framed their experiences in terms of relational justice, emphasising the importance to them of empathy and understanding from the court. They sought recognition of their efforts to address the concerns of social services and some acknowledgement of their life circumstances and parental role, even when court outcomes were unlikely to align with their wishes. As noted by one parent: ‘Being heard means recognition of who I am, not just what I’ve done wrong’.

The relational perspective highlights that conceptions of fair process typically fail to accommodate the emotional and psychological needs of parents to be heard by the court. Involvement in childcare proceedings is traumatic for parents, who often mentioned, in interviews, the negative impact on their mental health. Kong *et al.* (2025, p. 454) discuss the intrinsic benefits of ‘humanising’ the court process ‘through sympathetic responsiveness to the broader human story behind the legal matter at hand’. Creating opportunities within court proceedings to hear some of the ‘human context’ of legal matters can help to counteract some of the formality and hierarchy of legal procedures (Kong *et al.* 2025). It also conveys respect for parent voice and permits their more active participation in the proceedings.

Judicial behaviour is an obvious expression of courtroom atmosphere and creates the environment for parents’ participation. Parents were highly attuned to the treatment they received from the judge. Kind words, sympathy or empathy (even if performed) and acknowledgement of their life circumstances and challenges were recalled and recounted well after the event, even when a judgment was not as they had hoped. Parents also remembered disrespectful treatment, including where there had been no direct interaction with the judge whatsoever.

The lived experience of the family court reported by parents highlights a potential conflict in the aims of family justice reform. Earlier intervention from local authorities and the provision of support and legal advice for parents whose children are deemed to be ‘on the edge of care’ has been a long-term strategy to divert and thus reduce the number of cases that advance to public law proceedings. Pre-proceedings intervention can provide time and scope to examine family circumstances and communicate with

parents about expectations for change (Masson *et al.* 2013). Early intervention continues to be a clear objective in the recent reviews of children's social care. However, where cases reach the court, the emphasis on tackling delays and reducing the backlog in court caseloads suggests the prioritisation of efficiency and streamlining, creating the danger that opportunities for parent voices become further reduced or marginalised in formal legal proceedings. We have argued here that the framing of 'voice' in purely fair procedural terms risks reducing parent participation to a legal formality. This neglects the relational justice parents often seek, involving empathy, understanding, and acknowledgement of their struggles.

These findings corroborate the proposals set out by the PLWG (2021) about the need for a cultural change in the family court and the potential for learning from problem-solving court models such as FDAC about how to better engage parents and more actively include them in the court proceedings that concern their children. An obvious first step would be to reduce some of the formality of courtroom language and layout, including the current seating arrangements, in order to design a less intimidating more inclusive physical environment for parent participation. There is also a case for creating further opportunities for parent voice and the human story to be told within the current legal processes and procedures. This might involve parents being permitted to speak during or before the hearing, including directly to the judge, or in the form of a written contribution (as described above) that allows them to use their own words and language, something that was highly valued by parents in our research.

We do not underestimate the difficulties of designing a process that delivers the best outcome for the child whilst also being sensitive to how proceedings and their outcome impact parents. However, by seeking to address the issues discussed above, the family justice system can properly acknowledge parents' experiences of public law proceedings. Voice is a crucial component of participation, but 'effective voice' is not merely a procedural requirement of due process and must be understood in human terms and for its significance and meaning for parents.

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