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## CHILDREN AND YOUNG PEOPLE'S PARTICIPATION IN PRIVATE LAW FAMILY COURT PROCEEDINGS

*Dr Lauren Doyle, researcher, independent social worker and assistant manager at Cafcass*

### Introduction

This article draws upon the findings of a PhD study completed in March 2025, which explored children and young people's experiences of participation when their family came to court within private law family proceedings. The researcher conducted primary research through a mixed-methods approach, involving analysis of 50 children's files held by the Children and Family Court Advisory and Support Service (Cafcass), alongside a workshop with (21) children and young people with experience of family justice. The research situates children as active participants who hold the ability and expertise to shape, experience and make sense of their situations, recognising that family court proceedings do not simply 'happen to' children, or occur for each young person in the same way. Particular attention was given to critically engaging with children's participation, considering the context of private law family court proceedings and exploring how opportunities to participate are produced and meaning applied. The study concluded that whilst our ambition may be to position children as agential citizens, this remains an idealised notion. It offers new evidence about the nature of children's experiences when their family comes to court and makes suggestions about how we can move toward practice that is participatory.

### Background

Until recent years, there has been a focus on researching and understanding the needs of children involved in public law, rather than private law, family proceedings, which has prevented us from fully appreciating the unique experiences of these young people (Rogers *et al.*, 2015). This is despite children from within these families making up more than three-quarters of all cases in the family courts according to the Ministry of Justice's 2024 *Courts data: Family Court*. The growing focus has identified concern for the experiences of both adults and children who are involved in private law family proceedings, where significantly higher rates of domestic abuse, substance use and parental mental ill health affect families in England and Wales when compared to the general population (Cusworth *et al.*, 2021). Within the limited literature available, it has been observed that notably few children and young people have a voice within proceedings (Hargreaves *et al.*, 2024) and that without appropriate information about proceedings, they devise their own distressing interpretations of the family court (Butler *et al.*, 2003). Further, they are

most often unsatisfied with the opportunities afforded them (Cafcass, 2010) and that the help they require after the court process has ended is rarely available, suggesting that listening to children is not enough and support services are required (Timms *et al.*, 2007). Furthermore, the Harm Panel report established that the pro-contact culture can be particularly dangerous for child victims of domestic abuse, establishing that there has been an overarching failure to centralise the experiences and views of children and young people (Hunter *et al.*, 2020).

Practice developments undertaken by Cafcass and the piloting of new approaches to private law family justice demonstrate the recognition that change and improvement are needed. This research, however, identified that without a specific participation strategy that is evidence-based, measurable and founded in a children's rights framework, participation is left somewhat to chance.