

# Children's views and experiences of their participation in justice

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## Contents

<b>Executive summary .....</b>	<b>2</b>
<b>Introduction .....</b>	<b>2</b>
<b>Methods .....</b>	<b>2</b>
<b>Findings .....</b>	<b>3</b>
Children tell us they want to be included in decisions which affect them and want their voices to be heard by adults.....	3
Children tell us they want access to appropriate information to support their participation in justice .....	5
Children tell us they need safe, private and confidential spaces to participate in environments which support their inclusion.....	7
Children tell us their participation can be supported by positive interactions with adults ...	11
<b>Key Messages .....</b>	<b>12</b>
<b>Bibliography .....</b>	<b>13</b>

## Executive summary

### Introduction

The Centre for Youth & Criminal Justice (CYCJ) were asked to undertake a review of the international literature on the views and perspectives of children on their engagement and participation in justice as part of the Challenge Paper on Justice for Children. International law specifies children's right to be heard (Article 12, CRC) and participate in decision making at all stages of justice. The review takes a broad view of justice including children as parties, witnesses, victims and offenders in both criminal and civil legal matters.

Rather than reveal new or novel issues in regards to children's participation in justice, the review brings together the core themes which arise in the literature and research in relation to children's participation and engagement. In bringing together these literatures it is clear to see that participation in justice which is meaningful and beneficial to children centres on a small number of interrelated aspects, and should therefore not be outwith the scope of full realisation.

### Methods

A rapid review of the literature was conducted, which focused on large global or regional studies, both from academic and grey literatures. The purpose of the review was to obtain key and significant themes in relation to the views and experiences of children's participation in justice systems. Therefore prominence was given to literature which directly drew on the voices of children, their views and experiences.

Despite children's participation in justice being clearly defined in international law, the realisation of this varies across countries; subsequently research on participation is minimal, particularly that which explores children's direct experience. Additionally, from the limited number of sources available for the review, very few were co-produced or represented a genuinely participatory form of research. Direct quotes from children were included in most reports and are replicated in this review.

## Findings

### Children tell us they want to be included in decisions which affect them and want their voices to be heard by adults

*I think that it's important for them to have a say because it's their lives and they're going to have to deal with it and it's a choice that I think personally is up to them...* (Child-Cashmore and Parkinson, 2009)

Children have the right to be heard and a number of studies in a range of areas of justice provide evidence of children's clear desire to participate in some form. FRA (2017) found children in both civil and criminal proceedings expressed a desire to be involved in the processes and decisions being made about them. Similar findings can be seen through research on children's views of participation in child custody and family disputes (Birnbaum and Saini, 2012; Taylor and Gollop, 2015).

Participation, inclusion and empowerment is a salient issue for children across their journey through justice and includes the investigative process; preparing for the decision-making mechanism whether that be court, a hearing or a tribunal; the decision-making process itself; and importantly post decision, or sentence. Children can participate in different ways: directly by exercising choice or indirectly, by 'voice' and having a say in matters which may affect them; however Cashmore and Parkinson (2009) note that to participate in either form children are particularly dependent on adults.

#### **What did children get from participation?**

Often for children their participation can act to support a feeling of closure (FRA, 2017). Child witnesses have expressed that they perceive their involvement as contributing to justice or to the alleviation of another's suffering, providing a sense of empowerment and inclusion for the young person (FRA, 2017). The literature identifies that children feel participation shows their need and right to be acknowledged in decisions which affect them and that their participation would result in improved decision making- irrespective of the outcome (Cashmore and Parkinson, 2009).

### **Children's experiences of participation and being heard**

FRA (2017) found that being heard was both important for children on a personal level, and in terms of their views on the outcome of the decision. Even if efforts have been made to include the voices of children and young people, it is important to consider their perception of the impact and influence it had on decision making, and whether they perceived their views were taken seriously or not. In the research by Kilkelly (2010) approximately one third of children felt that their views were taken seriously; a third felt they were not taken seriously and the final third did not know. However, this means that two-thirds of children either did not feel their participation was worthwhile or were unsure.

The sense of being listened to and, perhaps more importantly heard, was influenced by a number of interrelated factors: children need to feel their views are being listened to and that they are being respected (Taylor and Gollop, 2015) and where professionals' attitudes were child-friendly, children were more likely to feel that they had been taken seriously (FRA, 2017). Similarly those who have negative views of participation tend to do so because their experiences have led them to believe their participation has not been valued (either in terms of the outcome or the process). Where children did not feel their contribution had been valued they would not promote participation to other children because of the potential harm that contact with inappropriate systems could have (FRA, 2017).

This reinforces the importance of children being treated in a 'child-friendly manner'- where they feel valued, respected and therefore feel they may benefit from the decisions being made.

While some children may express positive feelings towards their justice experiences, many describe the experience of their participation in justice more passively as "*something that happens to them or is done to them, rather than something they can actively engage with, and help shape and design*" (Hart and Thompson, 2009:24). Children can still perceive that decisions are made for, rather than with them. Often the nature of the justice process will involve a degree of conflict between parties which children express can leave them feeling vulnerable, cautious or unsure, despite their overall wish to be acknowledged and respected and viewed as able to participate (Birnbaum & Saini, 2012). Research with victims or witnesses in Child Sexual Exploitation (CSE) cases found that when participation is not meaningful and respectful, the process could feel disempowering, in some way mirroring the

relationships that resulted in their victimisation (Beckett & Warrington, 2015). Where engaging in the justice process was perceived as traumatic, particularly where this was accompanied by disappointment around the outcome of the case, children were sceptical of the overall benefit of their engagement (ibid).

The question is not whether children should be participating in justice, they have told us clearly that they should: the question is how this can be appropriately implemented and all children supported to participate effectively? We need to facilitate their right to participation while maintaining their participation serves to act in their best interest.

### Children tell us they want access to appropriate information to support their participation in justice

*“it was pure scary. I’d never been in care before at all, then getting locked up, no one told me what was going to happen. You should get given loads more information before you come in”* (Young person talking about secure care in Scotland, CYCJ 2017).

Children’s accounts of their participation in justice highlight a desire and need for appropriate information as every stage of their participation in justice, from helping to inform their initial decision on whether to participate, to helping make sense of the decisions that have been made. Information is necessary to ensure participation is relevant and meaningful (Beqiraj and McNamara, 2016); children also require explanation, clarification and responses to the questions and queries they have (FRA, 2017).

#### **What information do children want?**

The provision of information, whether verbal, written or otherwise, should be age-appropriate and child-friendly. However, children rarely report receiving child friendly material (FRA, 2017). Children do not appreciate jargon and want clear explanations to their questions (FRA, 2017). Children desire information prior, during and after their involvement with justice, so they can gain an understanding on what to expect and, afterwards, on what has occurred. Therefore children want information about processes, procedures (essentially what is going on and what will happen), their rights within those systems and how to enact those rights, for

example: how to complain (Kilkelly, 2010). This is important for children's participation in all aspects of justice as it is reasonable to assume that a child's perception of their engagement and empowerment within a justice system or process will have some sort of impact on their likelihood to feel supported to engage in complaints procedures or bring forward a grievance. Findings also suggest that older children, especially, need more information in regards to court processes in order that they can provide their informed views and preferences (Birnbaum and Saini, 2012).

Some children expressed confusion and anxiety at the prospect of participating in justice and welcomed procedural information- what to expect, who would be involved and their roles; but also practical and behavioural considerations for example, travel arrangements (Botley, 2010).

*"I was nervous...I had to go myself...because he wasn't there, I didn't really have anyone to ask where to go, what happens now, what to do"* (Child, Botley, 2010)

### **How does this information help children?**

Being able to access appropriate information via preferred methods was important to children. Having such information could reduce children's anxiety, fear and stress (FRA, 2017). A lack of information can undermine a child sense of protection during proceedings, with their safety key to participating within an appropriate environment. Similarly it can impede on their sense of control in the proceedings, with some children feeling unaware of their rights in relation to their participation, and subsequently feeling they do not have a choice as to whether or not to engage in proceedings (Beckett & Warrington, 2015). Children highlighted the importance of regular and proactive mechanisms for keeping them informed throughout their justice journey, and noted that it was important to maintain contact even when there was no update on a case (ibid).

### **How do children want to receive this information?**

While there is a requirement for organisations, agencies and professionals to have the skills and resources to effectively provide information to children, the research found they favoured information from those with whom they already have a direct relationship (parents, family, friends, peers, teachers) (Kilkelly, 2010; FRA, 2017). This reinforces the wealth of existing literature on the importance of building and maintaining relationships with children to facilitate

and ensure their meaningful inclusion and participation. Kilkelly (2010) found that for many children their previous experiences with adults shaped their expectations and ability to trust those around them to protect and respect their concerns and views. As well as feeling comfortable asking for further clarification from trusted and known adults, official and other authorities were seen by some children as having a vested interest in their participation (Kilkelly, 2010). When asked to how they wished to receive information, in addition to trusted adults, perhaps unsurprisingly, children chose the internet and television (ibid).

Providing young people with appropriate information, in the forms which they benefit most from can help alleviate anxiety and marginalisation, while supporting their participation which can bring important insights and increase notions of empowerment.

### Children tell us they need safe, private and confidential spaces to participate in environments which support their inclusion

Once children feel they have the information to empower their participation in justice, they then need access to the decision-makers and decision-making spaces (courts, tribunals, panels, boards) to support this. While Kilkelly (2010) found that children wanted direct access to decision-makers in order to have their views heard, this requires consideration to ensure 'child-friendly' environments, procedures and processes.

#### **Children must feel safe to be able to participate in justice**

Safety both facilitates participation and ensures that inclusion is not adversarial to children's wellbeing. Children identified the benefits of protective measures and procedural safeguards such as participating via technology, closed hearings and child-friendly premises, although not widely used, did help to promote feelings of security and protection (FRA, 2017). It was viewed as important to children that their participation in justice was kept confidential as perceived breaches could increase anxiety. For example, police contact at school could draw attention to their situation or potential reasons for contact with the police. Others learning, often partially, about children's contact with justice affected their feelings of control, safety and wellbeing.

*“They [the police] come to your school and say ‘we need to talk to this student’ so then you have to get taken out of class and your friends are all like ‘where are you going?’ and you have to make something up, but if they keep on doing it all the time then your friends are going to know something is up ‘cause you’re taking days off - you know what I mean? Just to be at meetings and stuff like that”* (young person, Beckett and Warrington, 2015).

Children would prefer private hearings, as they often felt ashamed or intimidated by the presence of others. Children have frequently expressed discomfort at the presence of numerous, unknown individuals during their interactions with justice (FRA, 2017).

*“It feels kind of strange. Especially with all these strangers. I didn’t know these people and I needed to talk about private matters”*. (Young person, FRA 2017).

A study conducted for the Children’s Commissioner in England on press access to family courts (Brophy, 2010) found that most children did not agree with press access because they feared exposure and their privacy and confidentiality being jeopardised; and that the media may not represent their reality accurately. They stated their presence could impact their willingness to openly and honestly give evidence or testimony.

Additionally, children would prefer to share their stories with as few professionals as possible, repetition of points or issues suggests they are not being heard and valued, and such questioning should be at a pace and place which is child appropriate. Consistency in personnel in cases allows children to build trust and a rapport, but also helps to minimise uncertainty and the distress of retelling their stories (Beckett & Warrington, 2015). Multiple hearings also led to multiple retelling of histories and incidents which were re-traumatising for children to recount (ibid). In addition to the number of hearings, children felt justice proceedings took too long, impacting on their attention and participation; and the length of time it could take to reach a decision could lead to prolonged periods of uncertainty and anxiety.

Children consistently noted the negative experience of meeting other parties, particularly defendants, during their participation in justice which raised significant discomfort (FRA, 2017). Therefore children had a number of valuable suggestions about how they could be

protected including for example separate entrances to justice establishments and child friendly waiting areas. (ibid).

Children commented on the impact of the physical environments where participation took place which can decrease stress and the potential for further traumatisation, as well as increasing the overall positive experience of children's contact with justice (FRA, 2017). Specialist facilitates were preferred to generic use offices or spaces and children's suggestions included age-appropriate toys and materials, clocks, access to refreshments and bathroom facilities, and welcoming décor with relaxing atmospheres (ibid). It is clear therefore that multipurpose areas such as police stations, interview rooms and courts are not appropriate without adaptation, particularly if children feel their confidentiality is not being maintained within these.

Despite efforts to ensure environments are 'child-friendly' some children may require support from others to effectively participate. While children did not want adults to speak for them they were happy to receive support from adults, whether that be professionals or other trusted adults (Kilkelly 2010; FRA 2017). Having a 'supporter' present, if that is the young person's wish, can promote a sense of security and reassurance:

*"It just would have been – you know good to just have someone there – because there's like two of them there and there's only one of me at the other side of the room"*  
(young person, Beckett & Warrington, 2015).

Liefaard, Rap and Bolscher (2016) identified that feelings of intimidation can impede children from participating and that the social context can overcome hesitance to use their voice. They identify a relaxed social environment consisting of making eye contact, smiling, using warm intonation patterns, having a relaxed body posture, building an initial rapport and complimenting children on the efforts they make during the conversation as important.

### **Intersectionality**

As noted previously, there is a paucity of research which explores children's experiences and perceptions of their participation in justice. Therefore there is even less consideration given to aspects of intersectionality which may impact on these experiences- both from the children

themselves and as a focus for research more generally. For example, the Mental Disability Advocacy Center (MDAC) (2015) note a lack of both quantitative and qualitative data on the experiences of children with learning disabilities in the justice system. Despite this, it could be asserted that the issues raised by children in the available research in regards to their participation will be particularly acute for particularly disadvantaged groups of children. For example, Beqiraj and McNamara (2016) found that low levels of literacy and education are felt to impact the awareness of legal rights by children in alternative care, homeless children and children living in poverty; while language skills may affect awareness of legal rights by children belonging to minority or indigenous groups and migrant children; in addition to informal discrimination which was widely reported. Speech, language and communication needs are also found to affect children's ability to participate in justice systems, as well as influencing how the justice system responds and perceives children (i.e. as credible witnesses, or as innocent or guilty parties). Importantly, SLCN are prevalent in disadvantaged children, including those in contact with the justice system.

The limited research that exists in relation to these issues, that also uses the direct experience of children, found that children felt that their personal biographies impacted on their treatment, particularly from police- this included their background, and existing vulnerabilities including issues such as: care experience; being already known to the police, particularly as a missing person; and difficult family circumstances.

“She tried to blame my upbringing for the people that I was associating with...she kind of like blamed me for what had happened” (young person, Beckett & Warrington, 2015).

Similarly, FRA (2017) found that some children felt discriminated against during their involvement in justice due to their age: as they either felt they were not being treated seriously or being treated as adults with no recognition of their status and needs as children.

All this serves to show that conditions must be facilitated which help children to feel safe and supported, and to have their specific needs taken in to account.

## Children tell us their participation can be supported by positive interactions with adults

The central importance of the relationships between adults and children involved in justice processes was clear, however children's views about the adults they came into contact with throughout their justice journey varied. Positive relationships based on respect, trust and empathy reflected positively on the overall experience of participation.

There were examples of research where children did not feel they could trust the adults who should support their participation and access to rights. Children felt adults did not understand their perspectives and experiences; or were potentially corrupt or led by alternative agendas (Kilkelly, 2010).

*"They can't fully understand how we feel...They work too slow while children suffer".*  
(Child, Kilkelly, 2010).

The police were consistently noted as having poor interactions with children and this is particularly concerning due to their central role in justice and the fact that they are often children's first contact with the justice system as child witnesses, accused or victims (Hart and Thompson, 2009; Kilkelly, 2010; Botley, 2010). Similarly Beckett and Warrington (2015:17) research found children experienced a lack of sensitivity and respect from police in their initial encounters, exemplified through, *"negative attitudes and questioning styles which left young people feeling judged and neither respected nor believed"*. Children felt police could potentially abuse their relative position of authority or interact disrespectfully, leaving them feeling disempowered (Botley et al, 2010).

*"They tell us what to do, and we got to do it. There's no reason or asking, because they're in authority they can make us, so they do"* (child, Botley et al, 2010).

Similarly negative experiences were found in relation to legal representation, which was felt to have little or no impact on children's overall enjoyment of participation (FRA, 2017). Children had little understanding of their role or the part they played in representing them (Parkinson and Cashmore, 2008; Smith, Taylor and Gollop, cited in Bell, 2015).

Rather, children value professionals who are friendly and respectful and who listen (FRA, 2017). This appeared to be more likely expressed towards professionals from social traditions (social work and psychology for example) which could be attributed to professional training, their likelihood of having sustained relationships with children, or because of their use of child-friendly language, materials and environments (ibid). Irrespective of the professional background, children valued trusting and respectful relationships (Taylor and Gollop, 2015; FRA, 2017).

## Key Messages

- Children want to be heard, but need to feel safe, supported, informed and empowered to do so. It is important to children that their participation is respected, valued and heard.
- Children, where possible and appropriate, want to participate directly in decision-making processes. There are differing perceptions about who is best placed to support this participation, but a trusting and respectful relationship between adults and children is key.
- The provision of social support, appropriate information, and child-friendly environments can help to empower children to participate. Ensuring participation protects children's confidentiality is important in reducing anxiety and avoiding (re)traumatisation.
- Empowering children to participate under these conditions, where their involvement is respected and they are supported to have their voice heard in appropriate and supportive settings, the more positive the overall experience of their participation in justice- irrespective of the outcome.

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