

Uncovering private family law: How often do we hear the voice of the child?

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A child’s right to participate and have their voice heard in private law proceedings is acknowledged in legislation and guidance – as a way of both informing welfare-based decisions and upholding their rights. This report explores the extent to which children across England and Wales participate (through the presence of court-ordered reports) and how the level of participation varies by child and case characteristics.

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Foreword

It is a common refrain in private law proceedings that the proceedings aren't about the rights of parents but about the rights of the child. There is a clear implication here – that when caught up in their own emotions, parents might not properly listen to their children and promote their welfare.

This report starts from the same understanding – that children have rights that need promoting and protecting – but it asks a different question. How well is the family justice system following its own instructions and promoting children's right to be at the centre of decision making about their lives?

This report reiterates previous findings that in many cases children's voices appear to be entirely unheard in private law proceedings. Importantly, it digs a little deeper and begins to ask questions about whether some children are heard more than others. Perhaps the most surprising finding is how little impact age has on whether children are provided with opportunities to be heard within proceedings. When we published our first report on the data relating to child participation in 2022, many of those we spoke to felt it was likely that the low levels of participation happening as an average masked significant variation – with very young children not being offered that opportunity because it would be developmentally inappropriate but older children being much more routinely heard. The data in this report does not bear that out. It poses searching questions about whether our current systems are fit for purpose – whether they are really responding to the evidence which highlights how important having a voice is for children and at a fundamental level whether they are enabling compliance with domestic and international law.

Lisa Harker
Director

Executive summary

Decisions made within private law children’s proceedings can have a very significant and long-lasting impact on the lives of children and their families. They can include who children live with and spend time with, as well as more specific questions such as what name they are known by or whether they are brought up in a particular religion. Most private law cases are between separated parents unable to agree on arrangements for a child’s upbringing, with an application made to the court for an order under the Children Act 1989.

A child’s right to participate in decision making about them and the importance of considering their wishes and feelings when making decisions are enshrined in international and domestic law. Research also highlights the importance of children being involved in decision making and the potential benefits of such involvement (see Roe 2021).

This report by the Family Justice Data Partnership – a collaboration between Lancaster University and Swansea University – seeks to deepen our understanding of whether and when children participate in proceedings. The study used Cafcass and Cafcass Cymru,¹ anonymised, population-level administrative data on all children involved in a private family law children case that included a section 8 application and started between 1 January and 31 December 2019 – 62,732 children in England and 4,293 children in Wales.² It explores:

- children’s participation in private law cases in England and Wales over a three-year period from their case starting
- whether and how levels of participation vary by the characteristics of the child, including age, gender, area-level deprivation, and the number of children involved in the child’s case
- whether and how levels of participation vary by court circuit and Designated Family Judge (DFJ) area
- the timing of children’s participation in proceedings.

1 Cafcass and Cafcass Cymru are the Children and Family Court Advisory and Support Service in England and Wales respectively, and promote the safety and welfare of children involved in the family courts.

2 Applications under section 8 of the Children Act 1989 include those for a child arrangements order, specific issue order and prohibited steps order.

What does the law say about child participation?

According to section 1 of the Children Act 1989, the child's welfare must be the court's paramount consideration when determining any question with respect to the upbringing of a child. The court is directed to have regard to the ascertainable wishes and feelings of the child concerned (considered in the light of their age and understanding).

Rights enshrined by Article 12 of the United Nations Convention on the Rights of the Child³ provide that children and young people should have the opportunity to have their perspectives included and considered in legal proceedings that affect them.

Article 8 of the European Convention on Human Rights suggests that children should have the right to attend a court hearing where the case impacts on their right to family life.

The Child Arrangements Programme (CAP) provides the practice framework for private law children's cases and is set out in Practice Direction 12B. The focus of CAP is on early settlement and streamlined proceedings. It directly prevents Cafcass or Cafcass Cymru from meeting with children before the first hearing. As a result, if settlement is reached at first hearing there is no mechanism available under CAP for children to have their wishes and feelings directly heard.⁴

- 3 Article 12 states that, 'Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child; and for this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.'
- 4 There is currently no data published on the proportion of private law cases that resolve at the first hearing, and this information is not available in the Cafcass or Cafcass Cymru datasets used in this analysis. The focus of this report is on all children involved in a private law application.

Markers of child participation

Where cases proceed beyond a first hearing, there are a number of investigations and reports which can be directed by the courts. These usually involve direct consultation or engagement with children, although this will be experienced differently by infants and young children than by teenagers. In this study we have considered four key routes through which children may participate in proceedings, on which data is available.

- **Cafcass section 7 welfare report/Cafcass Cymru Child Impact Analysis** – In England, the court may order Cafcass to prepare a section 7 report (or addendum). In Wales this is called a Child Impact Analysis report. These investigate and report on matters relating to the welfare of the child, which would include a family court adviser (FCA) meeting with the child, where appropriate, according to their age, maturity and preference.
- **Local authority section 7 welfare report** – the court may order the local authority to undertake an investigation of a child's circumstances and prepare a section 7 report (as above).
- **Local authority section 37 report** – the court may order the local authority to consider whether to apply for a care or supervision order, investigating the welfare of the child and whether or not they are suffering or at risk of suffering significant harm.
- **Rule 16.4 (guardian appointment)** – under rule 16.2 of the Family Procedure Rules 2010, children may be made a party to proceedings by the court, with a children's guardian appointed under rule 16.4 to independently assess the child's wishes and feelings, and welfare needs. The children's guardian is usually from Cafcass/Cafcass Cymru, but in England a caseworker from the National Youth Advocacy Service (NYAS) can provide representation for children and young people in certain circumstances.

Using these four markers, we report the proportion of all children involved in a private law application who may have participated in proceedings. These reports were not principally designed to facilitate participation, but they are seen as the key system tools for enabling direct engagement with children. There are other ways for children to participate, for example they might write to or meet with the judge, give evidence, or engage with experts such as psychologists or independent social workers, or commissioned services. This study was not able to explore these further types of participation as details are not routinely collected in the administrative data, and thus presents an incomplete picture of child involvement. While we do not have the data to explore these routes, practitioner feedback suggests they are much less frequently used and usually take place within the context of cases where one of the other markers of participation is present.

Key findings

Levels of participation

- Around half of the children – 53.9% in England and 47.5% in Wales – had at least one marker of participation within three years of the case start date. This means that for almost half of the 67,000 children in England and Wales who were involved in a private law case starting in 2019, there is no indication that they participated in their case.
- The most common marker of participation in England was a Cafcass section 7 report, for 38% of children. Similarly, in Wales, 36% of children were involved in a case where a Cafcass Cymru Child Impact Analysis report was ordered.
- Only 5.2% of children in England and 7.2% of children in Wales had more than one marker of child participation.

Variation in level of participation by characteristics of the child

- **Age:** There was a statistically significant difference in the proportion of children with at least one marker of participation by age, but this variation is surprisingly small. In England, two-fifths of children aged 10 to 13 and a greater proportion of older teenagers had no indication that they had formally participated in proceedings. In Wales, there was greater fluctuation, but a similar pattern is seen.

Figure i: Proportion of children with marker(s) of participation by age (England)

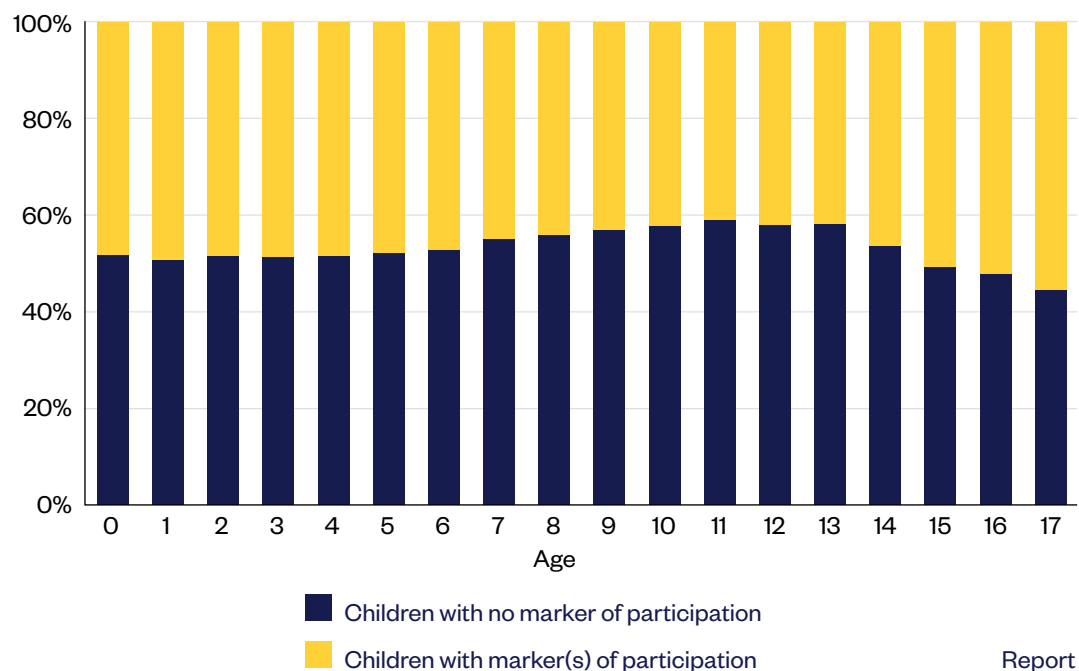
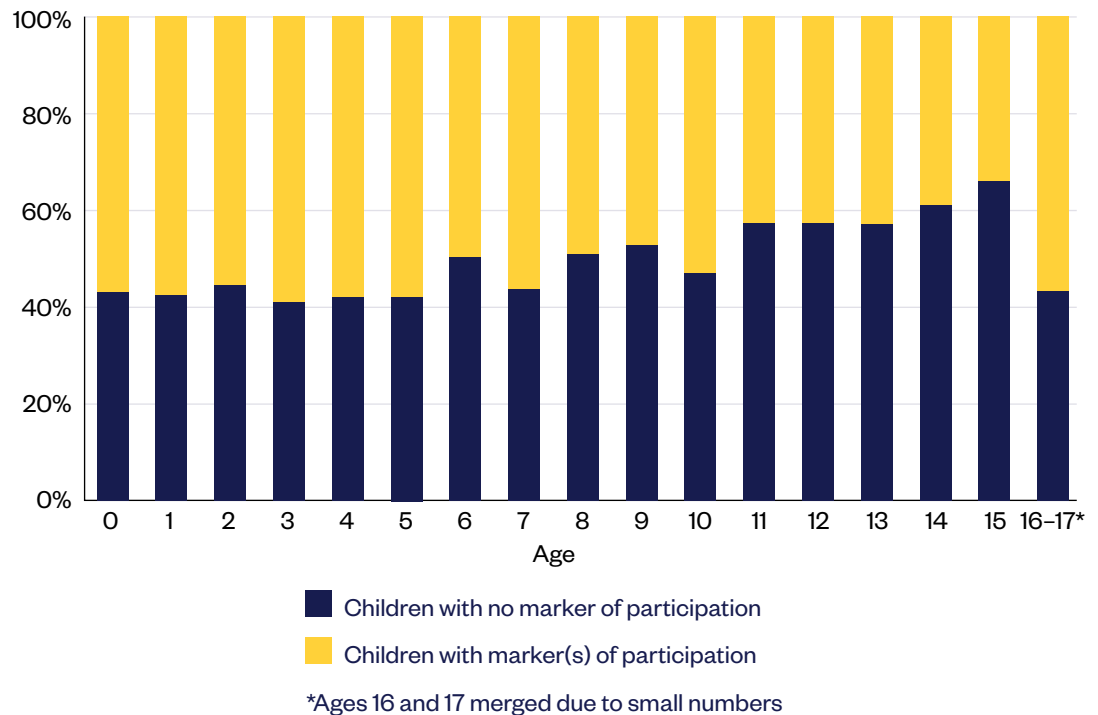


Figure ii: Proportion of children with marker(s) of participation by age (Wales)



- **Gender:** There was no difference in the level of participation by gender.
- **Area-level deprivation:** In England there was a statistically significant difference in participation rates according to the deprivation level of the area the children lived in. A higher proportion of children living in areas in the most deprived quintile had at least one participation marker, compared to those living in the least deprived quintile (56.1% compared to 50.6%). There were no statistically significant differences in Wales.
- **Ethnicity:** The data available for this time period did not enable analysis by ethnicity. In England, while data on ethnicity is collected by Cafcass, the amount of missing data (16.7% for children who did not have a marker of participation and 7.7% for those who did have a marker of participation) prevented reliable analysis. In Wales, Cafcass Cymru did not routinely collect ethnicity data during the study time period. Changes in recording practice will improve ethnicity data for future analysis, but the absence of information on any variation by ethnicity limits our current understanding of how children's characteristics relate to their opportunities to participate.

- **Number of children in the case:** The proportion of children who had markers of participation varied significantly depending on the number of children in the child's case. The level of participation was lowest for those who were the only child in their case (49.6% in England, 43.5% in Wales), compared to those with one sibling (54.6% in England, 48.0% in Wales), and children with two or more siblings (60.0% in England and 54.5% in Wales).
- **Region:** Participation across the six court circuits in England varied quite considerably, with the proportion of children with one or more markers of participation varying between 40.1% and 59.8%. There was also variation between the DFJ areas in each court circuit, from 35.5% to 63.6%. In Wales, the difference between areas was much smaller, with percentages of children with at least one participation marker ranging from 45.0% to 49.5% across the three DFJ areas.

Timing of participation

- For children whose cases started in 2019, markers of participation were most commonly ordered within the first three months of the case start date. This was the case for around a third of children in England (35.5%) and Wales (33.5%).
- Taking case duration into account, a greater proportion of children had a marker that they may have been directly consulted about their wishes and feelings the longer cases lasted. Two-fifths of children in a case still open to Cafcass in England (41.0%) or Cafcass Cymru in Wales (39.3%) three months after the start of proceedings had a marker of participation ordered. By 12 months, this had increased to almost four-fifths (79.8%) of children in a case still open to Cafcass in England and three-quarters (73.7%) of children in Wales.

Reflections

- Within private law proceedings, the family courts make hugely important and potentially life-changing decisions about a child's life. A child's right to participate in those proceedings, where decisions are made about them, is enshrined in both domestic and international law.
- However, this study found that around half of children, including older children and teenagers, did not have any indicators that they had been consulted directly during the course of proceedings. Although the study was not able to capture all possible participation, this suggests that strikingly few children have a voice in proceedings.

- This study has highlighted that the use of welfare reports and the appointment of a children’s guardian are the primary vehicles for children’s participation in proceedings. However, dependence on welfare reports to fulfil this function is problematic. Under the current framework in England and Wales, they are not ordered in all cases and cannot be ordered before a first hearing. Thus there is no universal mechanism for children to express their wishes and feelings, despite the hugely consequential nature of these cases.
- The relatively low level of increased participation by age may simply reflect that the type of safeguarding concerns that trigger the ordering of welfare reports is not variable by age. This suggests that a child’s right to participate, and the weight and importance of their wishes and feelings – in light of their age and understanding – is not being fully reflected in the current system, which does not offer routine involvement for older children, outside of these primary routes.
- The proportion of children who participated in proceedings varied by court area. There is a need to further investigate the drivers of this variation, which might include area-level deprivation, local policy, practice and culture. However, the findings do raise the concern that the ability of children to participate in proceedings might be based on systemic factors rather than decision making purely focused on their rights and welfare needs.
- The challenge to the family justice system as a whole is to reflect on the changes needed – in policy, practice and resources – to ensure mechanisms are in place that give children the opportunity to have their voices heard, both to ensure children’s rights are upheld and to support decision making that is in the best interests of the children.
- The pilot Pathfinder Courts, introduced in North Wales and Dorset in early 2022,⁵ uses a mechanism through which all children can have an opportunity for their wishes and feelings to be heard from the start, not just in those cases where welfare concerns were subsequently identified. Expansion of this type of model would enhance the voice of the child, responding to many of the concerns raised by the findings in this report.

5 The data used in this study predates the introduction of the Pathfinder model.

Introduction

In England and Wales, decisions made within private law children’s proceedings can have a very significant and long-lasting impact on the lives of children and their families. The majority of applications are made by parents who are unable to agree arrangements for children after a relationship breakdown (Harding and Newnham 2015; Cusworth et al. 2021; Cassidy and Davey 2011; Hunt and Trinder 2011), although 10% involve grandparents or other non-parents (see Cusworth et al. 2023). In private law proceedings, the court is asked to make decisions about a child’s upbringing, including who they live with and spend time with, which school they attend or what medical treatment they receive.⁶

As with public law, or child protection cases, the child’s welfare is the paramount consideration in private law children’s cases. To guide the court on the factors to take into account, section 1(3) of the Children Act 1989 gives a list of considerations, commonly known as ‘the welfare checklist’. Although the list is not in order of priority, it is of symbolic significance that the child’s views appear first. The family court is directed by section 1(3) of the Children Act 1989 to have regard to ‘the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding)’. This is in keeping with the rights enshrined by Article 12 of the United Nations Convention on the Rights of the Child 1989, for children to have the opportunity to have their perspectives included and considered in legal proceedings that affect them.⁷ Article 8 of the European Convention on Human Rights suggests that children should have the right to attend a court hearing where the case impacts on their right to family life.

It is also important to recognise that children are experts of their own experiences (James et al. 1998). Research has shown that children are more likely to accept the decisions made about their living, contact or other arrangements, and to have a more positive experience of contact and ongoing relationships with their parents,

- 6 Most applications are for a child arrangements order (under section 8 of the Children Act 1989), although a range of orders are available for different circumstances (see Cusworth et al. 2020, 2021 for a discussion).
- 7 Article 12 states that, ‘Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child; and for this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.’

when involved in the decision-making process (Cashmore et al. 2023; Fortin et al. 2012). Recent research in Wales found that participation can improve children's experiences of private law proceedings, through building trust in professionals and empowering children (Jones 2023). Having a voice in matters that concern their welfare has also been found to promote children's wellbeing (Stafford et al. 2021; Kay-Flowers 2019).

However, there is no statutory requirement to consult children directly in private law proceedings in England and Wales, and they are not automatically party to proceedings. Rarely present in court, their wishes and feelings tend to be presented by the adult parties (Stalford and Hollingsworth 2020). Indeed, children have been described as 'by and large, completely invisible in court' (Munby 2015), with their voices going unheard or 'muted' (Barnett 2020). A recent review of international research on children's experiences of parental separation and court proceedings (Roe 2021) found that children overwhelmingly do not feel heard, and have a limited understanding of the court process, the role of lawyers and judges, and their right to be heard. Although there were positive experiences, some children in a study by Symonds et al (2022), expressed dissatisfaction with how they were involved in court proceedings and decision making after parental separation and felt that their voices and views were not prioritised. This is consistent with other research in the UK, Norway, Australia and the US, which suggests that children want their views to be heard directly and to have the opportunity to participate more in family court proceedings (Cashmore 2011; Kay et al. 2012; Morrison et al. 2020; Carson et al. 2018). There have also been calls from the Family Justice Young People's Board, the JUSTICE working party on Access to Justice for Separating Families, the Family Solutions Group (a sub-group of the Private Law Working Group), and the Domestic Abuse Commissioner for a more child-centric family justice system, with children directly involved in decision making about their lives (Family Justice Young People's Board 2021; JUSTICE 2022; Family Solutions Group 2020; Domestic Abuse Commissioner 2023).

How do children participate in proceedings?

The emphasis of the Child Arrangements Programme (CAP), which applies to cases involving a dispute between separated parents, is on assisting families to reach agreement out of the court setting, and where a court application is made, on resolving cases at the earliest opportunity, ideally before or at the first hearing.⁸

8 There is currently no data published on the proportion of private law cases which resolve at the first hearing, and this information is not available in the Cafcass or Cafcass Cymru datasets used in this analysis. The focus of this report is on all children involved in a private law application.

When an application to the court is issued, in most cases a family court adviser (FCA), a social worker employed by Cafcass/Cafcass Cymru, will undertake initial safeguarding enquiries and prepare a safeguarding report for the court.⁹ This involves checks with police and local authority databases and separate brief phone calls with the applicant(s) and respondent(s). Practice Direction 12B, which provides the current framework for case management within the CAP,¹⁰ does not allow for direct work with children at this stage, stating that the FCA ‘will not initiate contact with the child prior to the FHDRA [First Hearing Dispute Resolution Appointment]’ (PD12B, para. 13.1).

Where cases are contested and proceed beyond a first hearing, there are a number of investigations and reports that can be directed by the courts. These usually involve direct consultation or engagement with children, although this will be experienced differently by infants and young children than by teenagers. Thus, as in our previous research (Hargreaves et al. 2022), in this study we considered the following four key routes through which children may participate in proceedings, on which data is available.

Cafcass section 7 welfare report/Cafcass Cymru Child Impact Analysis

At the first hearing, or indeed at any stage during proceedings, the court may, under section 7(1) of the Children Act 1989, order Cafcass/Cafcass Cymru to produce a report ‘on such matters relating to the welfare of the child as are required’. This report is also called a Child Impact Analysis in Wales.

In these cases, an FCA investigates the family circumstances, including the wishes and feelings of the child(ren). This often includes talking to children alone, possibly at a neutral venue such as their school. They will also spend time with each adult party and may speak to other people such as family members, teachers and healthcare professionals. Having made these enquiries, the FCA prepares a report, advising the court on what order would be in the child’s best interests.

- 9 This is with the exception of some urgent cases, and some cases where the local authority is already involved with the family.
- 10 The pilot Pathfinder Courts, which take a problem-solving approach to dealing with disputes between parents over arrangements for children, were introduced in February 2022 in Dorset and North Wales. Aimed at preventing the re-traumatisation of domestic abuse survivors and enhancing the voice of the child, this model provides for engagement with children before the first hearing to determine their circumstances, preferences for engagement and initial wishes and feelings at the outset of proceedings (Practice Direction 36z). Children involved in the Pathfinder pilot are not included in this study as they do not meet the inclusion criteria of cases starting between 1 January 2019 and 31 December 2019 (see Methodology for further details).

Local authority section 7 welfare report

A local authority is usually directed to carry out the section 7 report if it has current or recent involvement with the family. A family may be known to the local authority for a number of reasons – for example there may have been previous public law proceedings, or the child may be receiving care and support (in Wales),¹¹ be subject to a child protection plan or be a child in need (in England).¹² In these cases, there is likely to be an allocated local authority social worker who will have worked with the family before and carried out assessments. In preparation of the section 7 report, the local authority social worker will refer to previous records and work directly with the family, including the children, to provide advice to the court on the child's welfare.

Section 37 report

If the court becomes concerned about a child's welfare during the course of proceedings, and it seems that it might be necessary for a care or supervision order to be made, then it can direct a local authority to undertake an investigation of the child's circumstances and prepare a welfare report under section 37 of the Children Act 1989.

Section 37 has been described as a 'jurisdictional bridge' between private and public law proceedings,¹³ and although the court cannot force the local authority to commence care proceedings, the section 37 report must state whether they intend to apply for a care or supervision order, provide services or assistance or take other action.

Rule 16.4 (guardian appointment)

In particularly complex or contested cases, the court can make a child party to private law proceedings if it is deemed to be in their best interests, under rule 16.2 of the Family Procedure Rules 2010. Making a child a party is considered exceptional and should only occur in a minority of cases involving 'an issue of significant difficulty'.¹⁴ In these cases a guardian, usually from Cafcass (Cymru), is appointed for the child under rule 16.4, to give the court an independent view of the circumstances, and a solicitor is instructed by the guardian to represent the child in court. In England, the guardian

11 Under the Social Services and Well-being (Wales) Act 2014.

12 Section 17 of the Children Act 1989 places a general duty on all local authorities in England to safeguard and promote the welfare of children within their area who are in need. Fundamentally, a 'child in need' is a child who needs additional support from the local authority to meet their potential.

13 Re K (Children) [2012] EWCA Civ 1549 (Court of Appeal).

14 Practice Direction 16A Para. 71.

and solicitor are sometimes appointed from NYAS. In certain circumstances, older children may be given permission by the court to instruct their own solicitor.

Using these four markers, we report the proportion of all children involved in a private law application who may have participated in proceedings. It is important to note that while these are seen as the key mechanisms for enabling direct consultation or engagement with children, there are other ways in which children might participate in proceedings. For example, children might write to or meet with the judge, give evidence, or engage with experts such as psychologists or independent social workers, or commissioned services. This study was not able to explore these further types of participation as details are not yet routinely collected in the administrative data. However, while we do not have the data to explore these routes, it is worth noting that practitioner feedback suggests they are much less frequently used and usually take place within the context of cases where one of the other markers of participation is present. There have also been a number of initiatives in specific court areas, where children's participation has been facilitated in different ways. These have tended to focus on older children and while evaluations of such initiatives would be useful, insufficient information is currently available to have included them in this report.

Aims of this report

Our previous work (Hargreaves et al. 2022) considered what the administrative data held by Cafcass could tell us about the ways in which children participate in private law cases in England and identified the number of cases with such participation. Notwithstanding a number of limitations, the analysis suggested that 47.9% of private law cases in England that started in 2019/20 included one or more markers of participation within 12 months of the case start date.

The current analysis extends this work in a number of ways:

- it observes children's participation in private law cases in England and Wales over a three-year period from their case starting
- it explores whether and how levels of participation vary by the characteristics of the child, including by age, gender, area-level deprivation and the number of children involved in the child's case
- it explores whether and how levels of participation vary by court circuit and DFJ area
- it considers the timing of children's participation in proceedings.

Methodology

This report is based on analysis of anonymised population-level administrative data collected and maintained by Cafcass and Cafcass Cymru (see Bedston et al. 2020 and Johnson et al. 2020 for more information about the Cafcass and Cafcass Cymru data respectively), accessed through the SAIL (Secure Anonymised Information Linkage) Databank (Ford et al. 2009; Jones et al. 2014; Jones et al. 2020).

This study included all children within a private law case that started¹⁵ in England and Wales between 1 January and 31 December 2019¹⁶ and included a section 8 application (child arrangements order, specific issue order or prohibited steps order). There were a total of 62,732 children (involved in 40,753 cases) in England, and 4,293 children (involved in 2,848 cases) in Wales.

The cohort was followed for 36 months¹⁷ for the presence of markers indicating that children, according to their age and understanding, were likely to have been directly consulted on their wishes and feelings by an FCA, local authority social worker, or children's guardian. We considered whether a Cafcass section 7 welfare report/ Cafcass Cymru Child Impact Analysis, a local authority section 7 welfare report or a local authority section 37 report was ordered, and/or a rule 16.4 appointment was made, in the case in which the child was involved. In the Cafcass and Cafcass Cymru administrative data a direct link between the indicator and individual children is not always present,¹⁸ therefore for consistency, any reports and investigations ordered within a case were allocated to all children involved in that case.

15 Case start date is taken as the earliest application issue date within the case.

16 A small proportion of children (2.1% in England and 2.2% in Wales) were involved in more than one case during this period. As this study explores the participation of children during a case, these children will contribute multiple observations i.e. one observation for each case they are involved in.

17 Between January and March 2022, the average length of a private law case in England in which Cafcass was involved after the first hearing was 57 weeks. Where a case involved a rule 16.4 appointment this increased to 99 weeks (Cafcass 2022). A similar timescale was seen in Cafcass Cymru rule 16.4 cases, with an average duration in 2022 of 96 weeks (see Cafcass Cymru 2023). This study took a 36-month (156 week) observation window. While the majority of cases will close within 24 months (104 weeks), this allowed the observation of participation in cases with a longer-than-average duration.

18 Within the Cafcass administrative data there is no direct link between section 7 welfare reports from Cafcass and some rule 16.4 appointments and which child(ren) within the case they relate to. Within the Cafcass Cymru administrative data there is no direct link between any of the indicators studied here and the child(ren) they relate to.

This report describes the proportion of children, along with the number of cases this relates to, with evidence of participation having occurred within 36 months of the case starting, the type of participation marker and how frequently children experienced multiple types of participation.

We investigated whether the occurrence of participation differed by children's characteristics, including age,¹⁹ gender, area-level deprivation²⁰ and the number of children involved in the child's case. We do not report on ethnicity for either Wales or England, as ethnicity was not recorded in Cafcass Cymru administrative data during the study period and the level of missing ethnicity data in England exceeded 10%. Overall, the level of missing data in England was 11.8%, varying between 7.7% for children with evidence of participation to 16.7% for children with no markers of participation. Previous research by the Family Justice Data Partnership (Alrouh et al. 2022; North et al. 2022) details the level of missing ethnicity records in Cafcass and Cafcass Cymru data over time. Continued improvements in the consistent recording of ethnicity will enhance our understanding of ethnic diversity in private law and enable robust analysis of any variation.

To be confident that any difference observed in the data are real differences and not simply a chance finding (i.e. statistically significant), chi-square tests with a p-value threshold of 0.05 were used throughout.

We also explored, through the use of funnel plots, variation by court circuit²¹ and Designated Family Judge (DFJ) areas.²² The funnel plots were formed by plotting the proportion of children who had markers of participation within three years of the case start date against the number of children in private law proceedings in each area.

We explored the time to initial participation from the child's case start date, identifying the point in proceedings this initial evidence of participation was recorded. It is

19 How participation is experienced will be different for children of different ages. The nature and extent of a child's involvement is currently considered in light of their age and understanding, but there is no minimum age specified. In this analysis, figures for children of all ages are provided to enable comparisons.

20 The 2019 Index of Multiple Deprivation (IMD) and the Welsh Index of Multiple Deprivation (WIMD) were joined to Cafcass and Cafcass Cymru respectively. Deprivation quintiles (from 1 – most deprived to 5 – least deprived) were assigned to each child via the lower-layer super output areas (LSOA) where they were living at the time of application. Cafcass provisions LSOA codes directly to the SAIL Databank. Cafcass Cymru does not, therefore records were linked to the Welsh Demographic Service Dataset (WDSD) via an anonymised linkage field (ALF) to obtain an individual's LSOA. SAIL anonymisation and linkage methodology is described elsewhere (Lyons et al. 2009).

21 There are six English court circuits as classified by His Majesty's Courts and Tribunal Service (HMCTS), that correspond to distinct geographical regions for the practice of law: North West, North East, Midlands, South West, South East and London. Wales operates as a single court circuit.

22 There are 40 DFJ areas in England and three in Wales, as classified by HMCTS.

important to note that this is the point in proceedings at which the court ordered welfare reports, rather than when participation occurred. We also conducted life table analysis, a type of survival analysis (Hosmer et al. 2011) used when investigating the time until a specific event occurs – in this research, the initial marker of participation – during a certain follow-up period, taken here as three years from the case start date.²³ Through this method we estimated the cumulative rate of participation for children remaining in open cases with Cafcass/Cafcass Cymru at each time point, while taking account of cases that closed to the organisation before that point.²⁴ All children in the England cohort were included in this analysis, although a number of observations in the Wales cohort were omitted due to missing closure dates.²⁵

Some caution should be applied in making comparisons between England and Wales due to differences in recording practices, thus data from the two countries is analysed and discussed separately. Figures stated here are not directly comparable to Cafcass, Cafcass Cymru or Ministry of Justice reported figures for a number of reasons, including differences in data structuring, unit of analysis and data cleaning.

Study strengths and limitations

This is the first research to use administrative data held by Cafcass and Cafcass Cymru to investigate the extent to which children participate in private family law proceedings in England and Wales. However, we acknowledge the following limitations:

- Children might participate in ways other than those examined in this study – such as writing to or meeting with the judge, attending court, giving evidence,²⁶ engaging with experts such as psychologists or independent social workers, or commissioned services. Data on these may be recorded in case notes but was not systematically collected by Cafcass and Cafcass Cymru in the administrative data we studied.

23 Measured in discrete three-month intervals.

24 Cumulative participation rate is calculated at 1 – cumulative survival rate estimated by the life-table analysis.

25 In the Cafcass Cymru administrative data the status of a case could be recorded as ‘Awaiting Order’ when their involvement was no longer required but details of the final legal order was unknown, in these instances a closure date was not recorded – this occurred in 10.6% of the sample.

26 A Re W report considers the ability of the child to give evidence, their views, and the impact, or risk of harm, that giving evidence may have on them, and involves direct consultation with the child.

- The Cafcass database records information during its involvement in a case. Children’s participation after this point, even if NYAS in England or local authority involvement continues, will not be captured in the data. Involvement of the local authority is often used as a reason to close the case on the Cafcass/ Cafcass Cymru system, hence information will not be available after the judge has ordered, for example, a local authority to undertake a section 7 report. As a result, figures presented here may be an underestimate of children’s participation.
- Where a marker of participation is recorded as being ordered in a case, we have taken that to indicate all the children in that case were directly consulted in preparing that report. This may not always be the case. Markers suggest that children will have had the opportunity to be directly consulted, but this depends on their age and maturity.
- From the administrative data, we do not know the extent, intensity or duration of consultation, nor how this is experienced by children, which may vary significantly from child to child.
- It was originally intended that this study would include the investigation of relationships between ethnicity and children’s participation. However, Cafcass Cymru did not record ethnicity data during the study period and it was not possible in the Cafcass administrative data, given the previously detailed levels of missing ethnicity records, to explore this relationship with confidence and maintain research validity. We recognise this is a significant limitation in terms of understanding the characteristics of the children being described.
- The study period includes the COVID-19 pandemic that started in March 2020, thus findings may not be typical of years either pre- or post-pandemic.
- Studies based on administrative data are necessarily limited by the scope and quality of available data, which is collected primarily for organisation and management rather than research purposes.

Findings

The following sections present an overview of child participation within three years of the case starting, going on to consider how the level and type of participation varies by child and case characteristics, and the timing of participation within proceedings.

Indicators of child participation

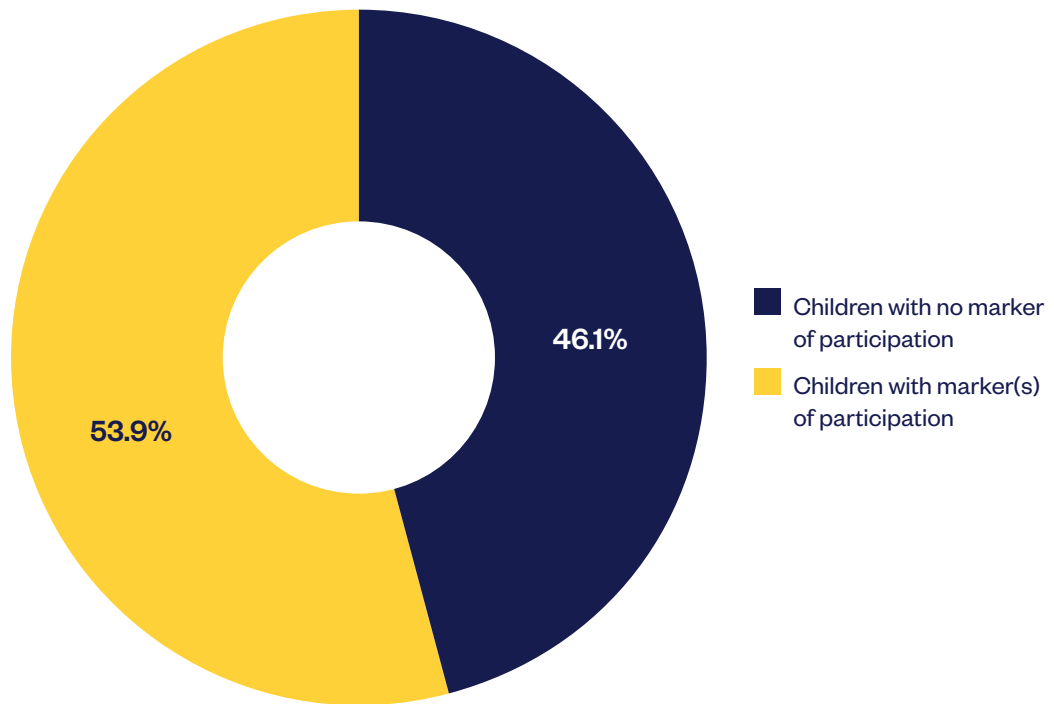
This section considers the proportion of children with a marker of participation within three years of their case starting. The four main markers of participation, derived from the administrative data, are a Cafcass section 7 report/Cafcass Cymru Child Impact Analysis report, a local authority section 7 report, a local authority section 37 report, and a rule 16.4 guardian appointment. These markers are taken as an indication that a child, given their age and understanding, was directly consulted.

England

A total of 62,732 children were involved in 40,753 private family law cases starting in 2019 in England that included an application for a section 8 order. Overall, 53.9% of children had one or more markers that they may have participated in proceedings within three years of the case start date, as seen in Figure 1.²⁷

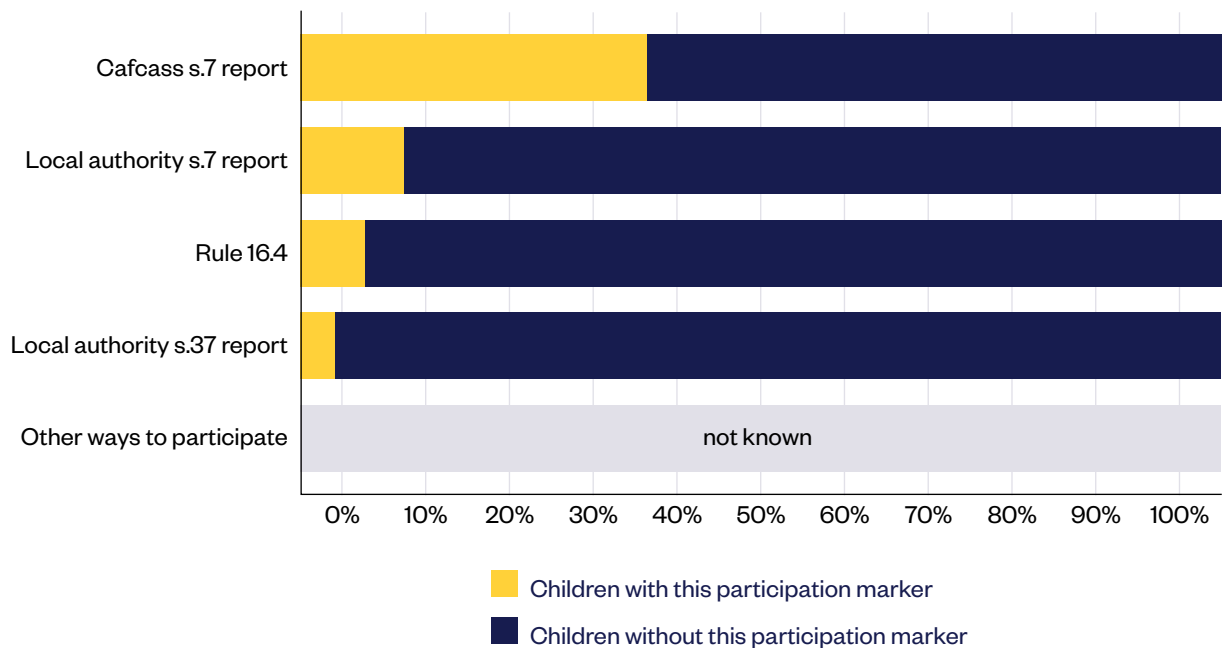
²⁷ In our earlier research (Hargreaves et al. 2022) we reported that almost half (47.9%) of cases starting between 1 April 2019 and 31 March 2020 had one or more markers of participation within 12 months of the case start date. The figures presented here are slightly higher for a number of reasons: we have considered the proportion of children, rather than cases, we have included cases starting in the calendar year 2019 rather than 2019/2020 fiscal year, and have followed cases for 36 months, rather than 12 months.

Figure 1: Proportion of children with marker(s) of participation (England)



The proportion of children who are likely to have had their views sought directly via each of the markers of participation is shown in Figure 2. The most common indicator that children may have been directly consulted is through Cafcass being instructed by the court to undertake a section 7 welfare report. This occurred within three years of the case start date for 37.6% of children. The local authority was ordered by the court to undertake a section 7 report for 11.2% of children. It is worth acknowledging however, that we do not know, from the available Cafcass administrative data, what the section 7 report said or what happened next in the child's case.

Figure 2: Proportion of children with each type of participation marker (England)

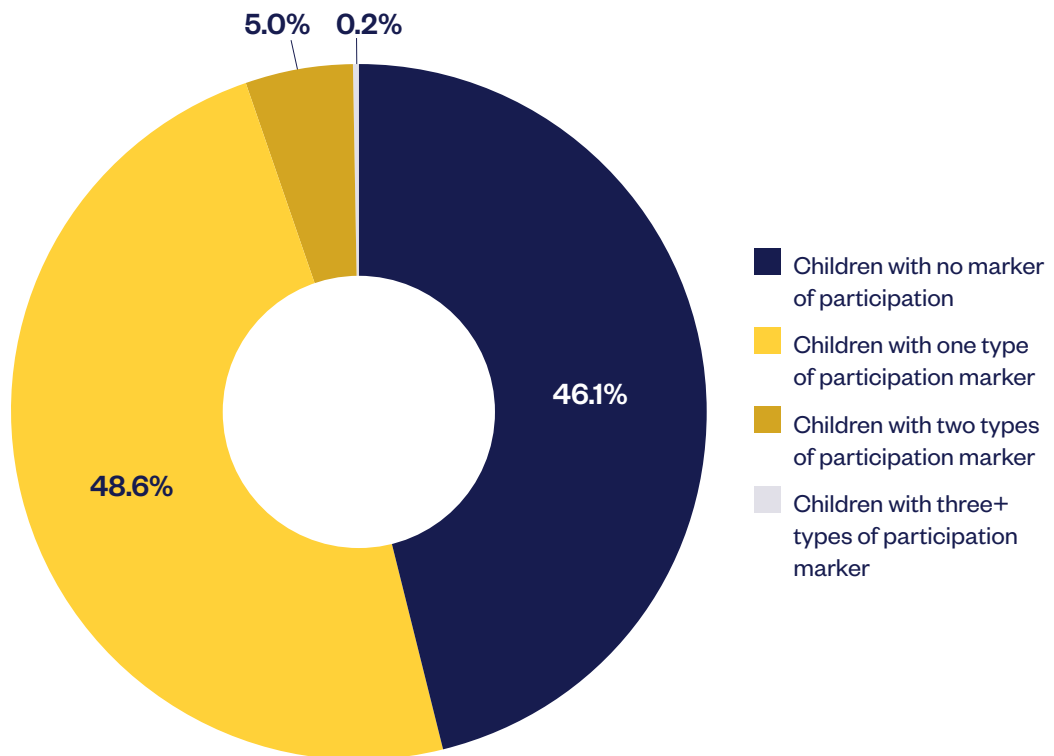


For 3.7% of children, the court directed the local authority to prepare a section 37 report (to investigate whether it might be appropriate for care proceedings to be issued). Again, it is worth emphasising that this relates only to the period in which Cafcass was involved and we have no information on the findings of this section 37 report or whether care proceedings were recommended and issued.

Within three years of the case start date, 7.0% of children were made party to proceedings, with the judge appointing a children's guardian under rule 16.4.

It is possible that children may have more than one of the four markers of participation within three years of the case starting – 48.6% of children had one marker, 5.0% had two markers, and 0.2% had three or four (Figure 3).

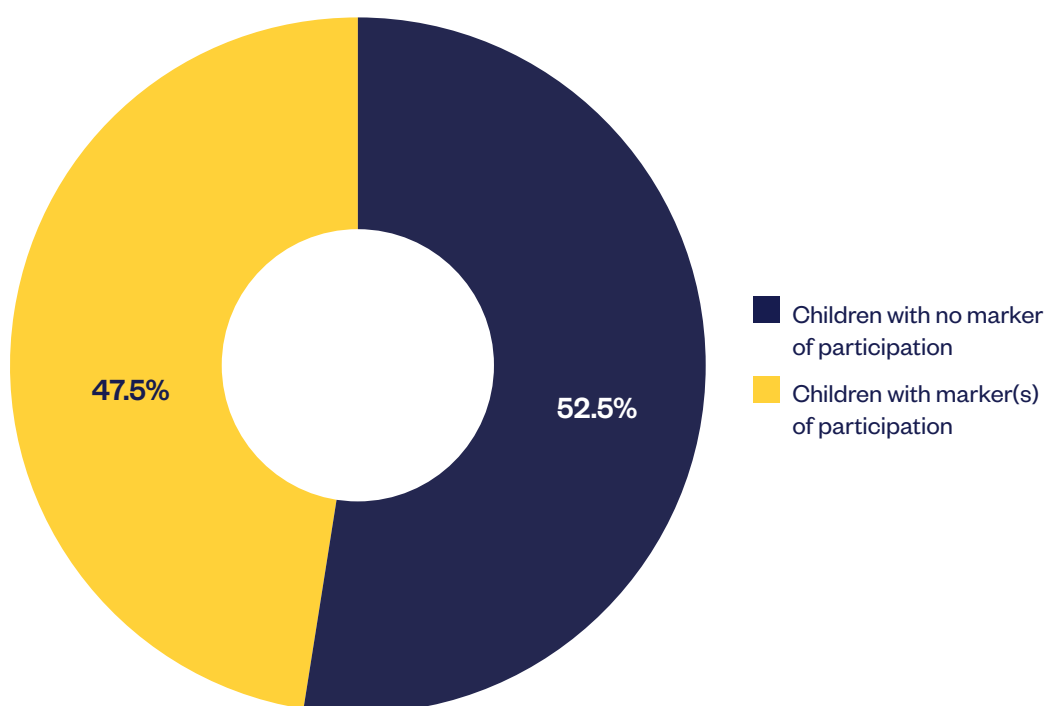
Figure 3: Proportion of children with one or more type of participation marker (England)



Wales

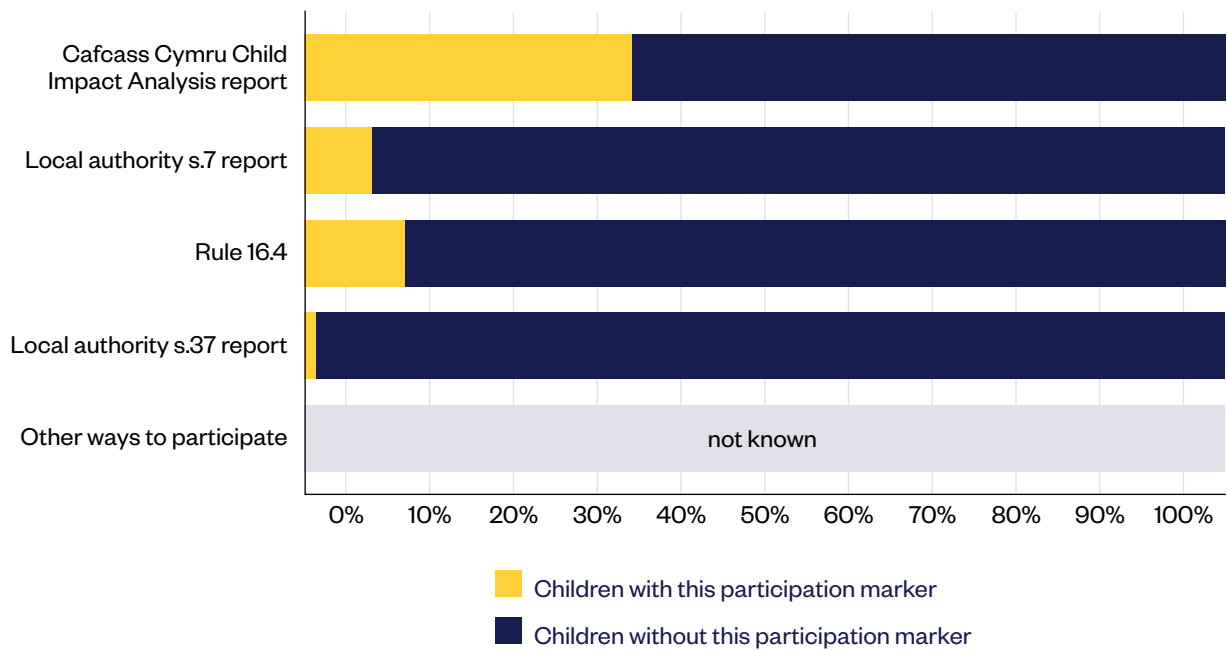
In Wales, a total of 4,293 children were involved in 2,848 private family law cases including a section 8 application starting in 2019. Overall, 47.5% of these children were in a case that included one of more markers that they may have been directly consulted within three years of the case start date, as seen in Figure 4. Although this is slightly lower than the figure reported for England, caution should be applied when making comparisons between the two countries due to the different recording practices and data sources.

Figure 4: Proportion of children with marker(s) of participation (Wales)



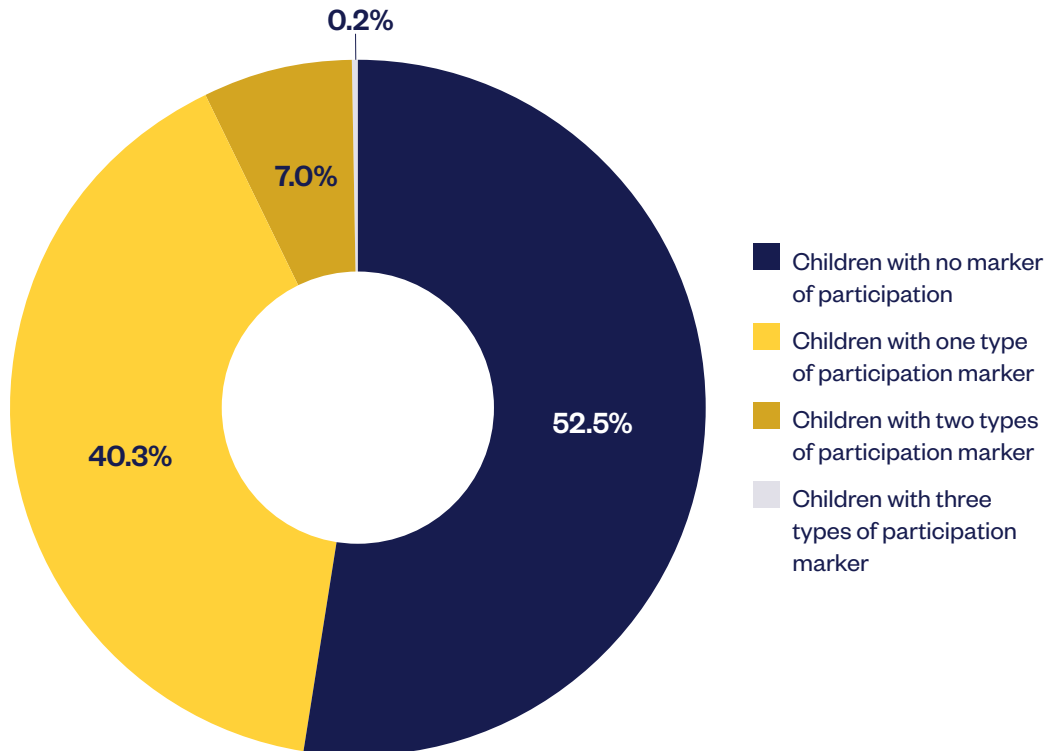
Over a third (35.6%) of the children in Wales were in a case that included a Cafcass Cymru Child Impact Analysis report (under section 7 of the Children Act), as seen in Figure 5. A further 7.2% had a local authority section 7 report and 1.2% had a local authority section 37 report within three years of the case starting. For a tenth of children (10.9%), it is recorded that the judge made them party to proceedings within three years of the case start date, with the appointment of a children's guardian under rule 16.4.

Figure 5: Proportion of children with each type of participation marker (Wales)



Two-fifths (40.3%) of the children had one indicator of participation recorded within three years of the case start date, 7.0% had two indicators, and just 0.2% of children had three markers of participation (Figure 6).

Figure 6: Proportion of children with one or more type of participation marker (Wales)



Variation in level of child participation

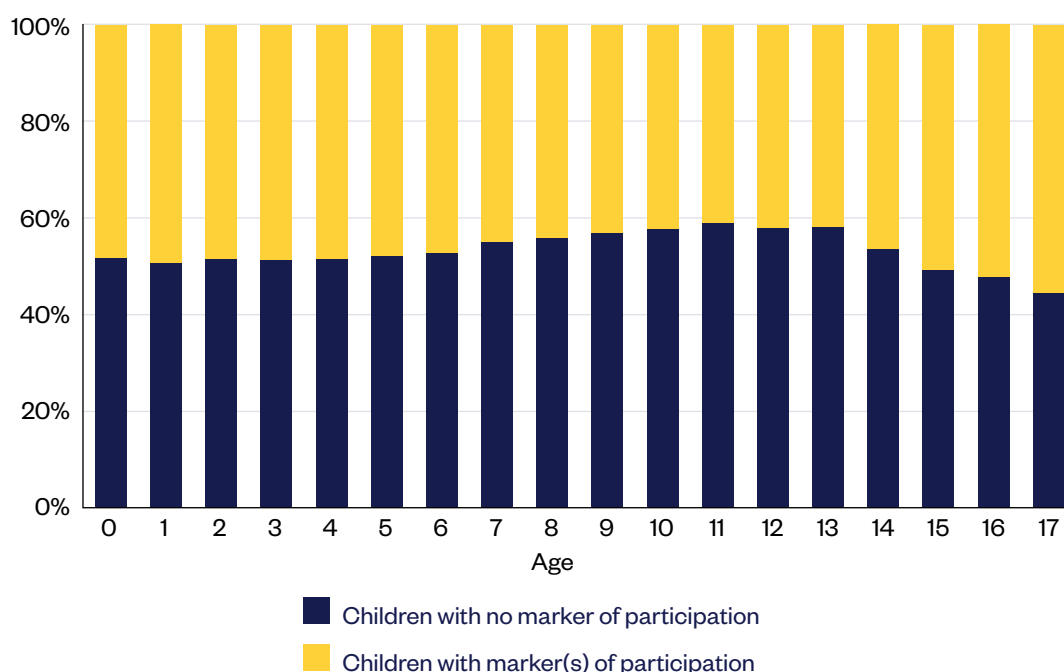
This section considers how the level of participation – that is, the proportion of children in cases that started in 2019 who had one or more markers of participation within three years of the case start date – varies by child and case characteristics.²⁸

England

Child characteristics

The proportion of children with one or more markers of participation does vary significantly by age, but this variation is surprisingly small, as seen in Figure 7. Just over half – between 50.7% and 52.7% – of the youngest children, those under 7 years old at the time proceedings started, were in a case with at least one court-ordered report indicating welfare concerns. Where appropriate, according to their age, maturity and preference, their wishes and feelings may have been sought directly during the preparation of these reports. Older children were slightly more likely to have markers that they had participated, with between 53.6% and 58.9% of those aged between 7 and 14 years old having at least one of the indicators within three years of the case starting. Although fewer in number, the oldest teenagers in proceedings had the lowest levels of participation, with less than half of those aged 15 and over having one or more markers (between 44.5% and 49.2%).

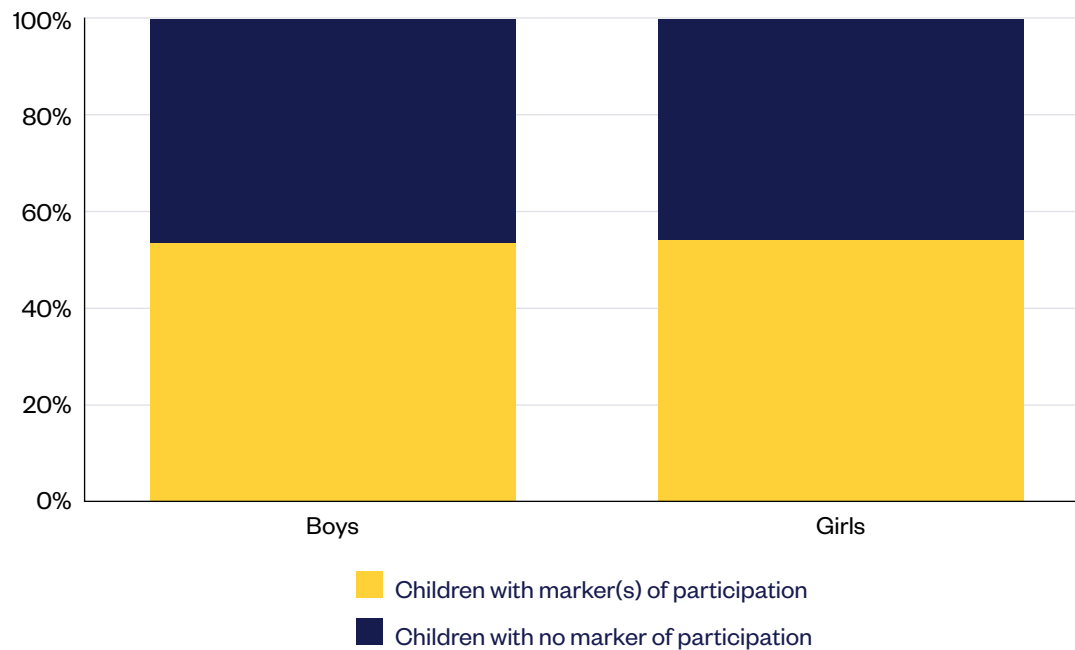
Figure 7: Proportion of children with marker(s) of participation by age (England)



28 Data by characteristics can be found in Table A.1 for England and Table A.2 for Wales, in Appendix A.

There was no significant difference by gender in the proportion of children who had markers that they had participated in proceedings, with 54.6% of boys and 54.1% of girls having one or more indicators within three years of the case start date (Figure 8).

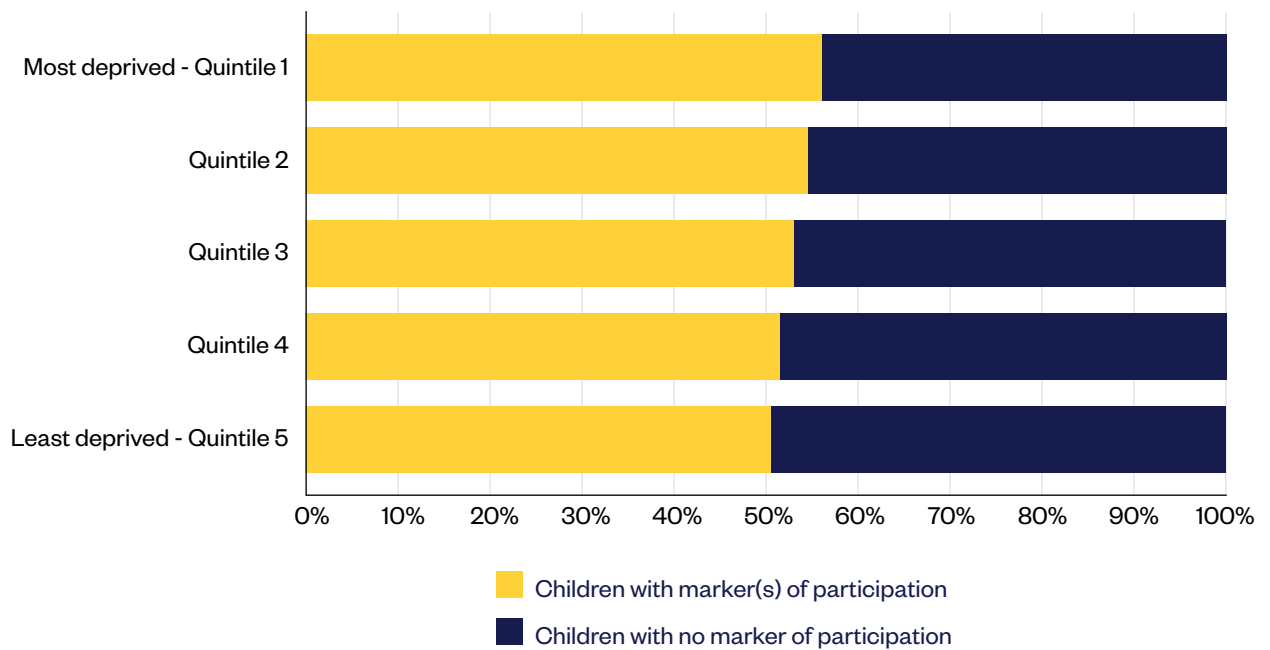
Figure 8: Proportion of children with marker(s) of participation by gender (England)



Area-level deprivation

There is a statistically significant association between area-level deprivation and level of child participation, as seen in Figure 9, although the variation is substantively small. A higher proportion of children living in areas in the most deprived quintile (56.1%) had one or more markers that their wishes and feelings may have been directly sought, compared to those living in the least deprived quintile (50.6%).

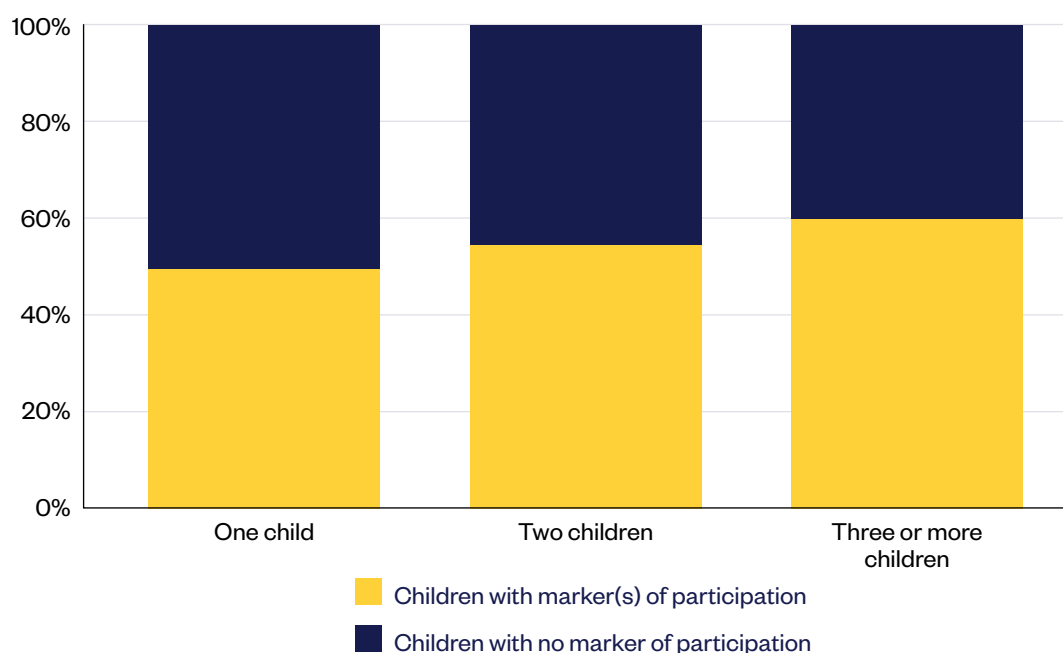
Figure 9: Proportion of children with marker(s) of participation by area-level deprivation (England)



Number of children in the child's case

The proportion of children who participated varied by the number of children in the child's case (Figure 10) and was found to be statistically significant. Just under half (49.6%) of children who were the only child in their case had a marker of participation, compared with 54.6% of those with one sibling, and 60.0% of those with two or more siblings.

Figure 10: Proportion of children with marker(s) of participation by number of children in the child's case (England)

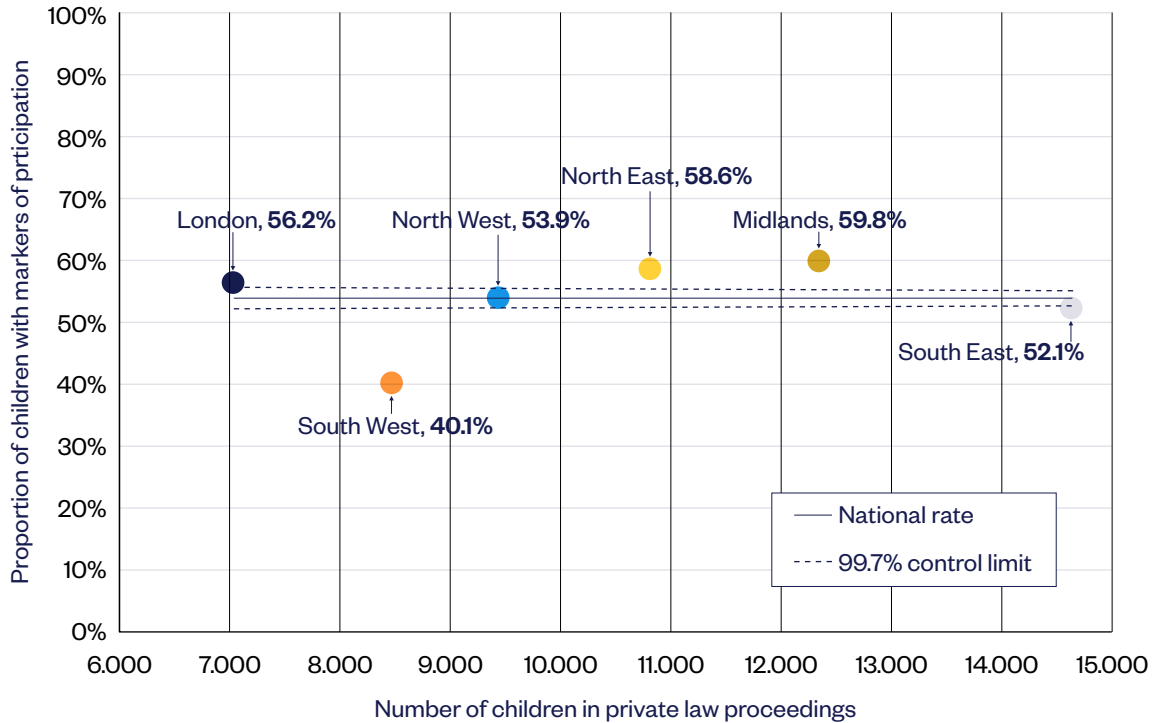


Variation by court circuit

Nationally, 53.9% of children had one or more marker that they may have been consulted directly about their wishes and feelings, but this may mask regional variation. To explore this, we calculated the proportion of children in proceedings within each of the six English court circuits who had markers of participation within three years of the case start date. A funnel plot (Figure 11) shows variation against the national average, indicated by the straight horizontal line, with each coloured dot representing the proportion of children with markers of participation in one court circuit, plotted against the total number of children in private law proceedings in that area. The dashed lines represent 'control limits', within which we would expect 99.7% of areas to fall. If court circuits fall outside the broken lines, then variation is greater than expected and indicates that these areas depart significantly from the national trend.

As can be seen, there were higher than average levels of participation in the North East (58.6%) and Midlands (59.8%), and lower levels in the South West (40.1%). The level of participation in London (56.2%), the North West (53.9%) and the South East (52.1%) did not differ significantly from the national average.

Figure 11: Proportion of children with marker(s) of participation by court circuit (England)

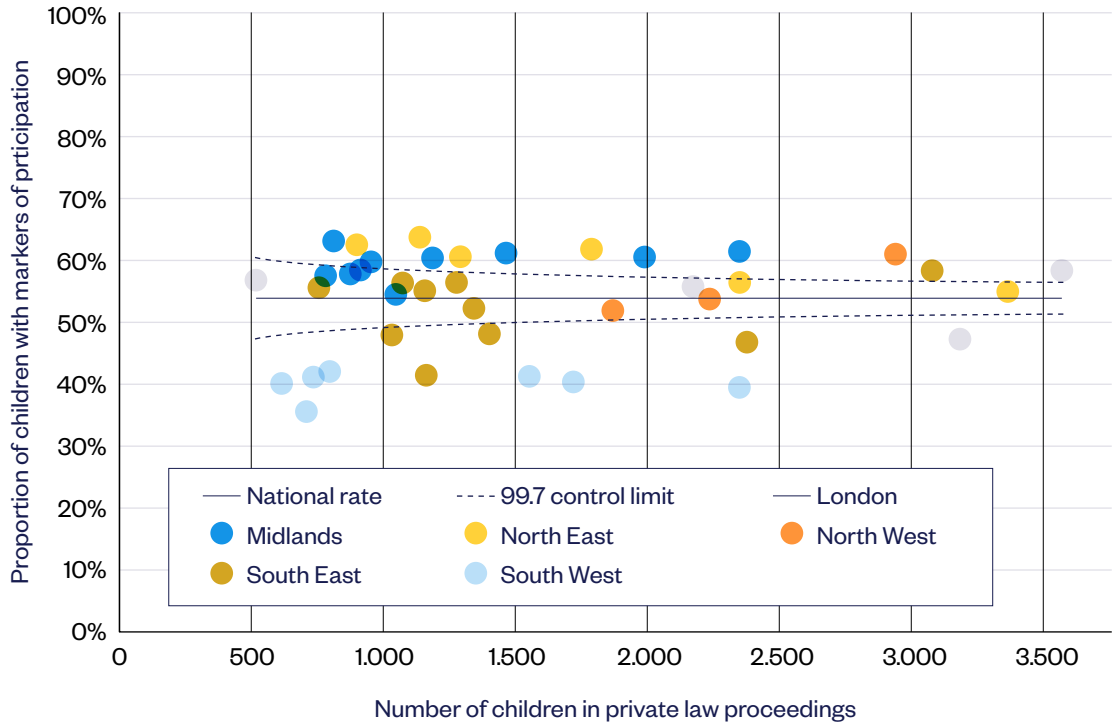


Variation by Designated Family Judge area

To explore whether there was variation within court circuit areas, Figure 12 shows the proportion of children with markers that they may have participated in proceedings for each DFJ area in England, colour-coded by court circuit.

Three court circuits – the Midlands, North East and North West – have rates or participation across their DFJs that were as expected or higher, given the number of proceedings in that area. The DFJs in the North West and South East court circuits show even greater variation, with some participation rates within the control limits of the funnel, some above and some below. All of the DFJs in the South West show participation rates consistently lower than might be expected, given the number of proceedings.

Figure 12: Proportion of children with marker(s) of participation by DFJ area (England)

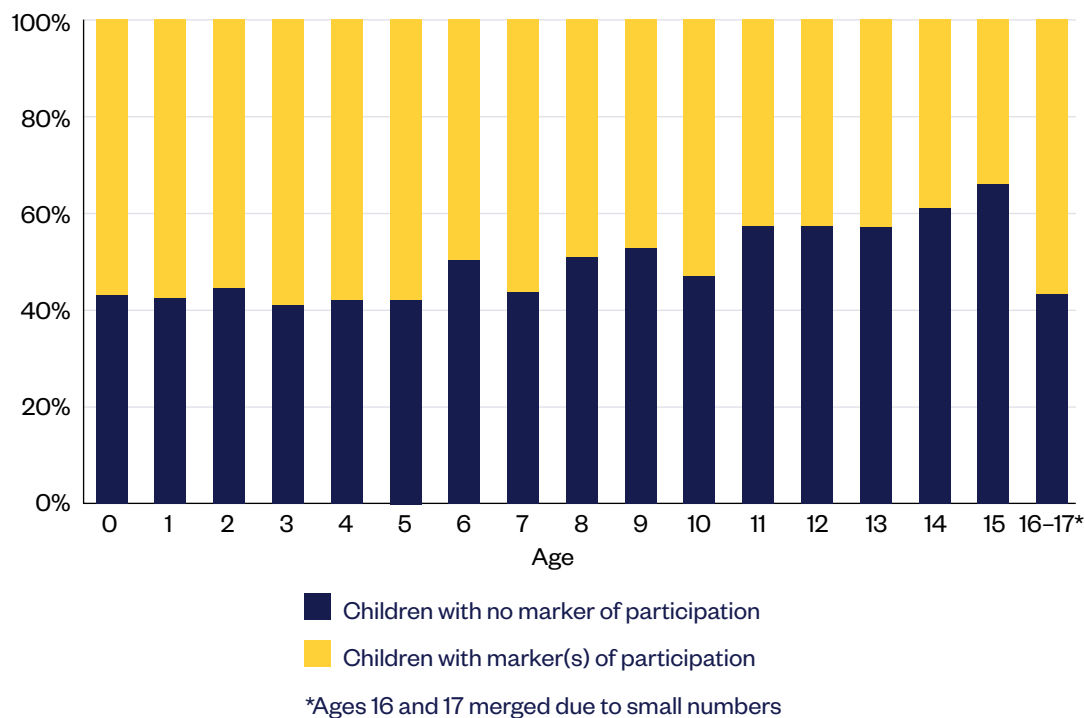


Wales

Child characteristics

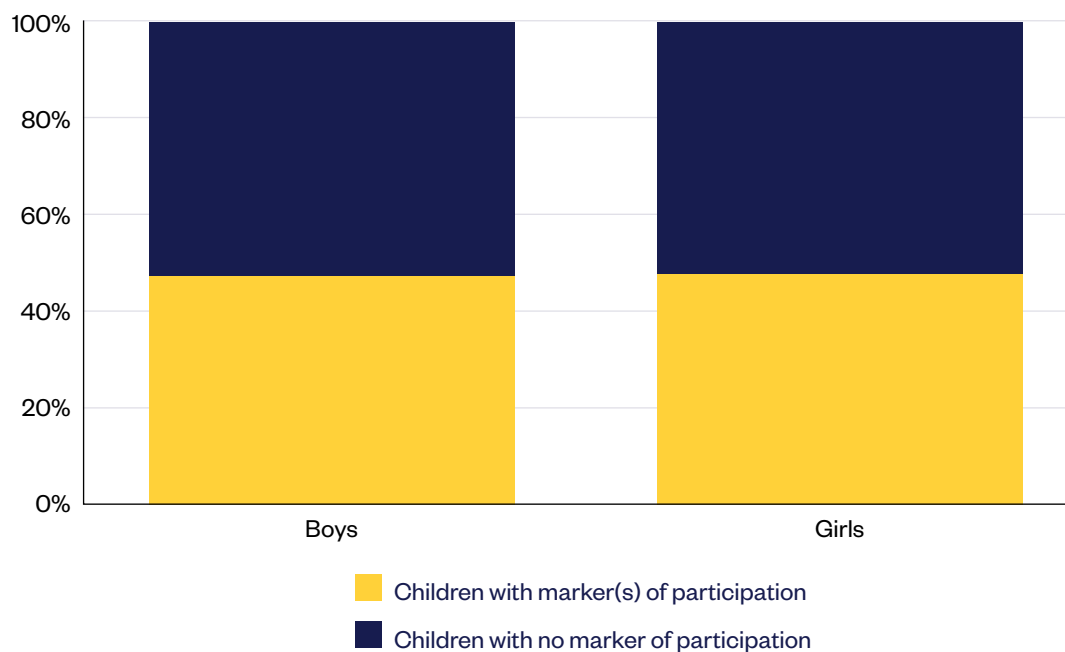
As in England, the proportion of children who had markers of participation varied by age, as can be seen in Figure 13. These differences were found to be statistically significant. Participation was lowest for the youngest children at between 40.9% and 43.1% for those aged 5 years and under at the start of proceedings. For children aged between 6 and 10 years old, levels of participation varied between 43.7% and 52.7%. While slightly higher proportions of older children had markers of participation – over half of those aged between 11 and 15 years old (between 57.3% and 65.9%) – this still leaves large numbers of children with no indication that they had an opportunity to have their voices heard. We can also see that less than half (43.2%) of young people aged 16–17 had markers of participation.

Figure 13: Proportion of children with marker(s) of participation by age (Wales)



There was no significant difference by gender in the proportion of children who had markers that they had participated in proceedings in Wales, with 47.4% of boys and 47.7% of girls having one of more indicators within three years of the case start date (Figure 14).

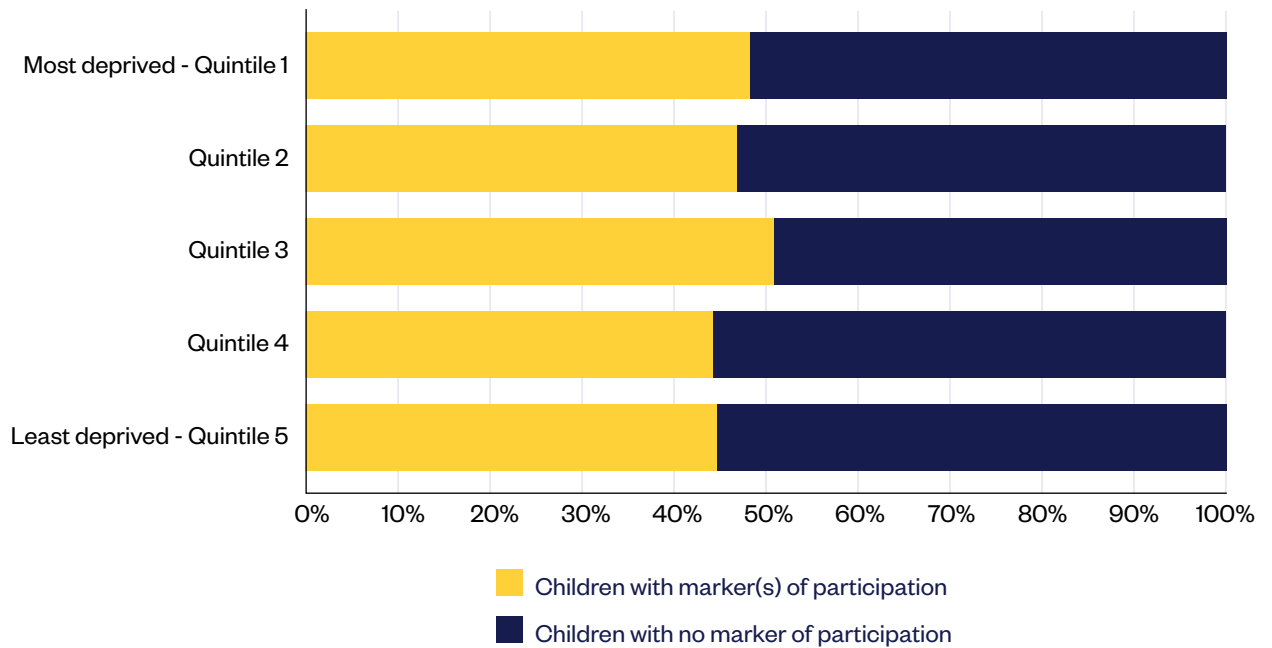
Figure 14: Proportion of children with marker(s) of participation by gender (Wales)



Area-level deprivation

In Wales, there was no statistically significant relationship between area-level deprivation and the proportion of children who had markers of participation within three years of the case start date (Figure 15). The proportion of children with one or more markers ranged from 44.3% to 50.9%.

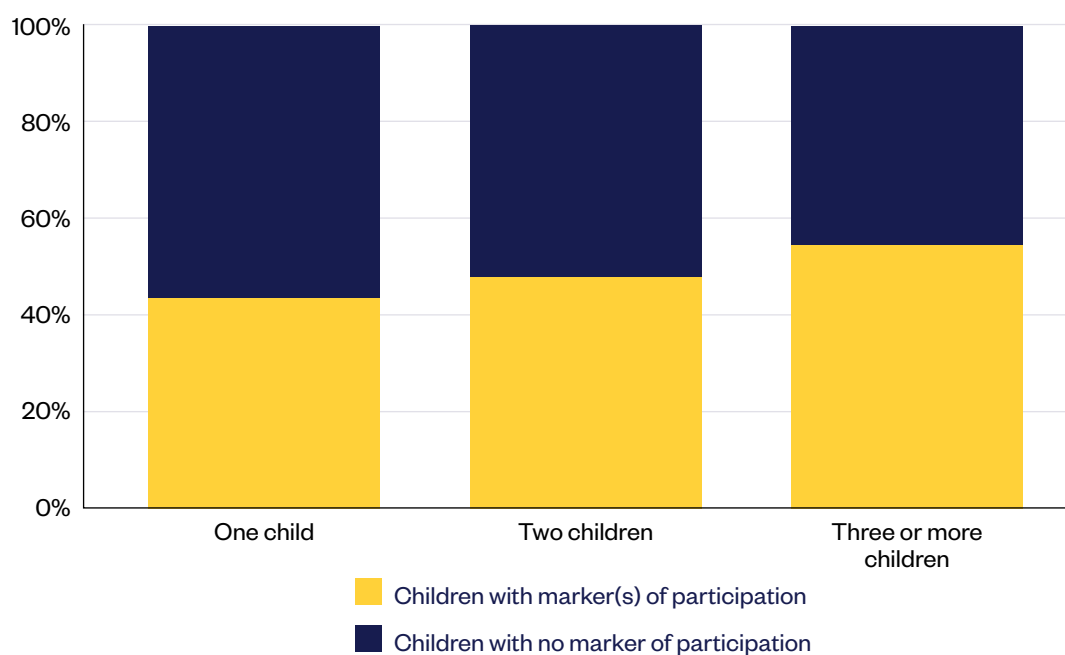
Figure 15: Proportion of children with marker(s) of participation by area-level deprivation (Wales)



Number of children in the child's case

As with England, a significant difference was seen between the number of children in the child's case and levels of participation. Individual children had lower levels of participation than those in sibling groups – 43.5% of those who were the only child in their case had one or more markers of participation within three years of their case starting, compared with 48.0% of those with one sibling and 54.5% of those with two or more siblings (Figure 16).

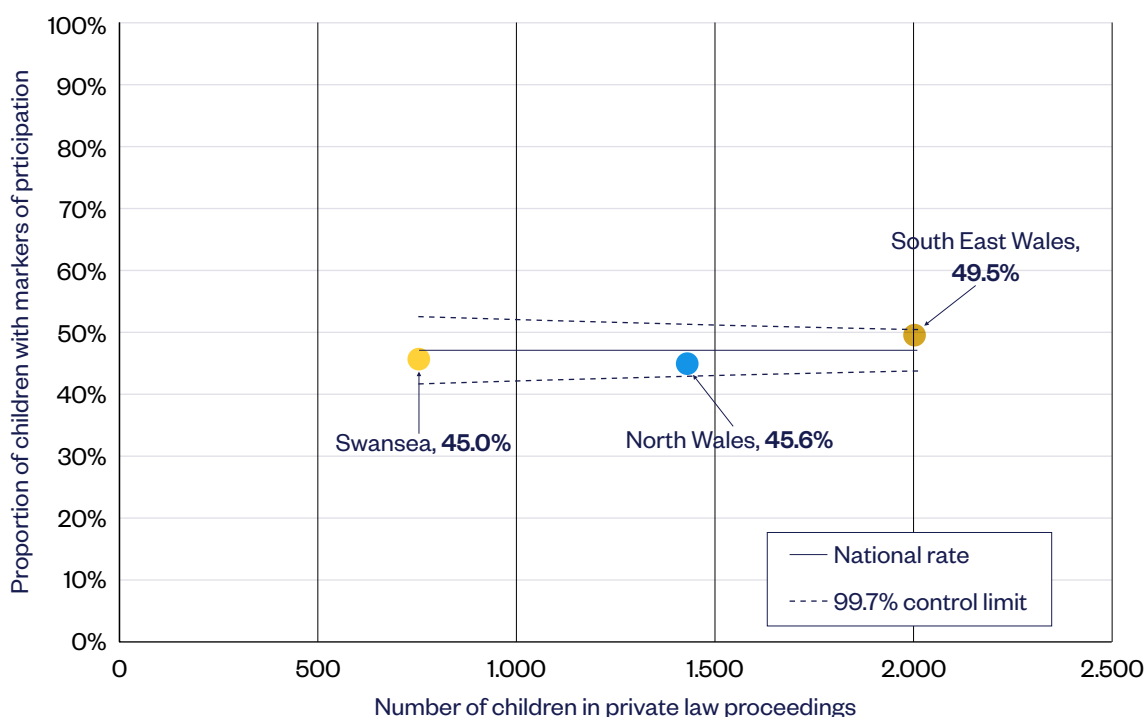
Figure 16: Proportion of children with marker(s) of participation by number of children in the child's case (Wales)



Variation by Designated Family Judge area

Unlike in England, we saw very little variation between the proportions of children with a marker that they may have participated in proceedings by DFJ area, with all three areas having figures close to the national average and within the expected limits (Figure 17).

Figure 17: Proportion of children with marker(s) of participation by DFJ area (Wales)



Timing of child participation

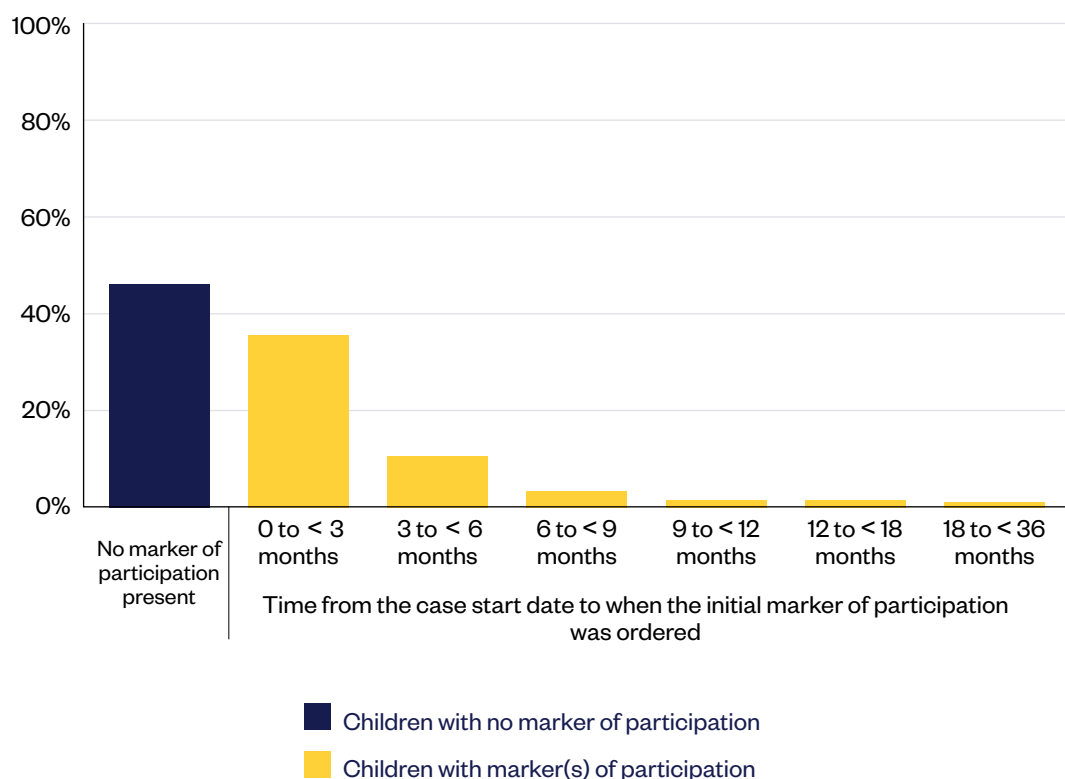
In this section, we discuss the timing of child participation, relative to the case start date. It is important to note that this is the point in proceedings at which the court ordered welfare reports, rather than when participation occurred and, as noted above, these reports can only be ordered following a first hearing.²⁹ We then discuss how the proportion of children with markers of participation increases with the duration of Cafcass (Cymru) involvement, while taking account of cases that close to the organisation before that point.

England

The majority of the 53.9% of children who had a marker of participation had the initial marker ordered within the first six months of the case starting, 35.5% within the first three months of proceedings, and 10.7% between three and six months (Figure 18). For the remaining 7.7% of children who had indicators that they may have been directly consulted, this was ordered more than six months after the case started.

²⁹ The timeframe for filing section 7/Child Impact Analysis and section 37 reports is determined by the court, but is usually 12 weeks and 8 weeks respectively, with consultation with children occurring at any time during that period.

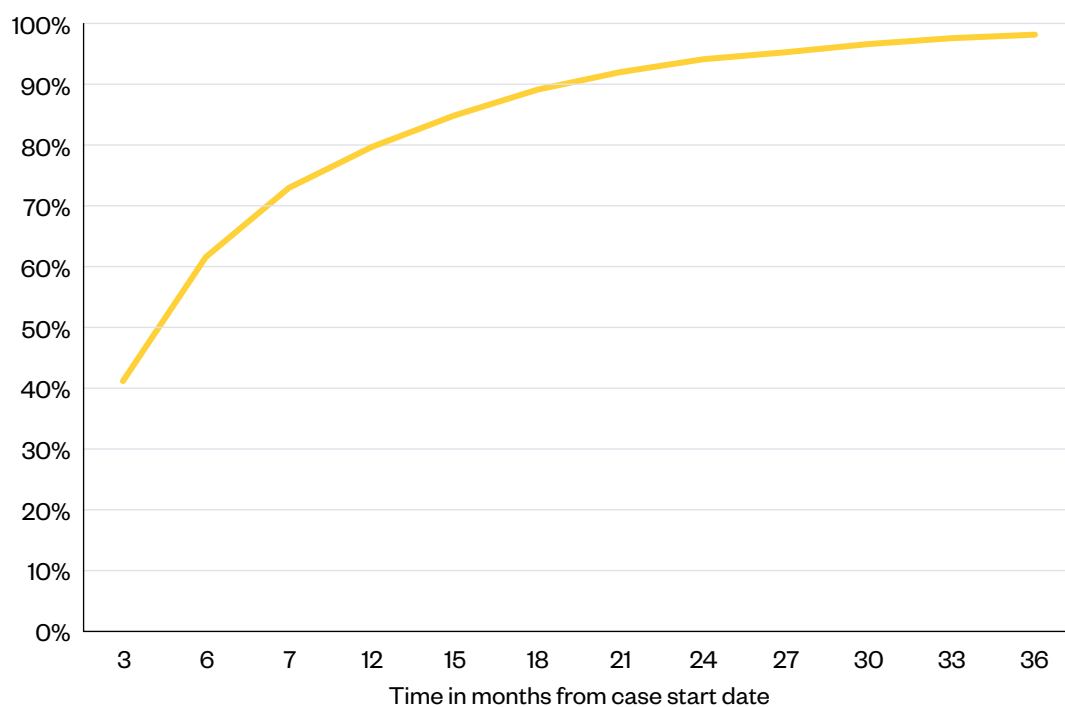
Figure 18: When children’s initial participation marker was ordered in proceedings (England)



To consider how the proportion of children with markers of participation increases with the duration of Cafcass involvement, we conducted life table survival analysis. This enables us to understand the cumulative probability that, at a certain time point, children still in cases open to Cafcass³⁰ will have had a welfare report or guardian appointment ordered by the court, giving them an opportunity to have their voices heard. As can be seen in Figure 19, two-fifths (41.0%) of children in a case still open to Cafcass 3 months after the start of proceedings had a marker ordered. By 12 months, this had increased to four-fifths (79.8%) of children in a case still open to Cafcass. In cases still open to Cafcass at 18, 24 and 36 months, this increased to 89.3%, 94.2% and 98.3% respectively.

³⁰ It is important to note that the Cafcass database only records information during its involvement in a case. Some proceedings may continue without Cafcass involvement. In these instances any participation or case actions beyond that point would not be recorded, for example if the local authority was asked to undertake a section 7 welfare report, or the case closed, these details would not be recorded.

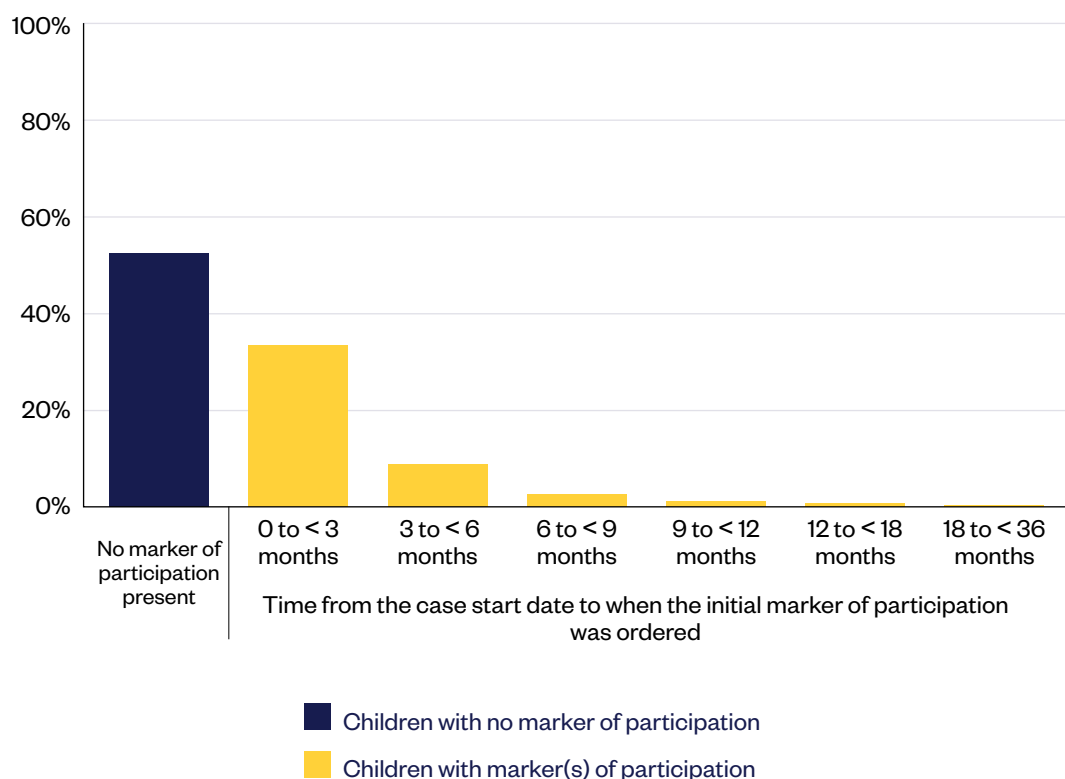
Figure 19: Proportion of children, in cases still open to Cafcass at each three-month interval, with a marker of participation having been ordered (England)



Wales

While 52.5% of children in Wales had no marker of participation, a third (33.5%) of children had their initial participation marker ordered within three months of the case start date and 8.9% between three and six months (Figure 20). For 5.1% of children their initial marker of participation was ordered more than six months into proceedings.

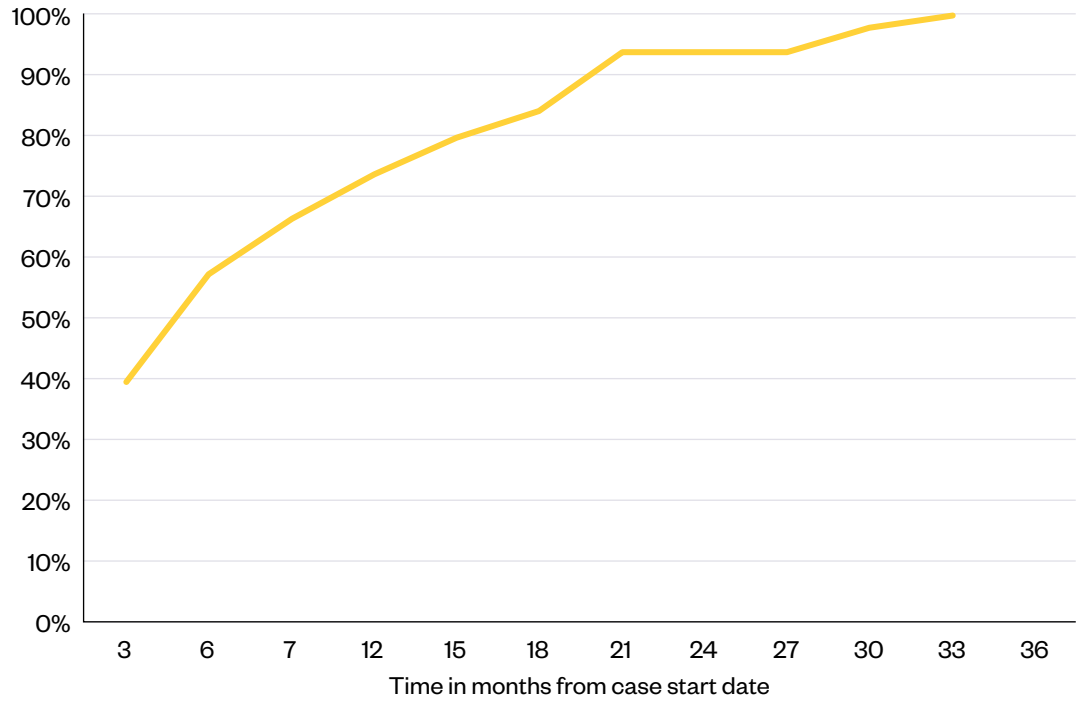
Figure 20: When children's initial participation marker was ordered in proceedings (Wales)



As in England, life table survival analysis was undertaken to investigate the cumulative probability that, at a certain time point, children in cases still open to Cafcass Cymru will have had a welfare report or guardian appointment ordered by the court, giving them an opportunity to have their voices heard. Two-fifths (39.3%) of children involved in a case still open to Cafcass Cymru³¹ three months after the start of proceedings had a participation marker ordered (Figure 21). By 12, 18 and 24 months, this had increased to 73.7%, 84.1% and 93.8% of children respectively. All children whose private family law case was still open to Cafcass Cymru after three years had markers of a welfare report or guardian appointment ordered.

31 Cafcass Cymru only records information during its involvement in a case. Some proceedings may continue without Cafcass Cymru involvement. In these instances any participation or case actions beyond that point would not be recorded, for example if the local authority was asked to undertake a section 7 welfare report, or if the case closed, these details would not be recorded.

Figure 21: Proportion of children, in cases still open to Cafcass Cymru at each three-month interval, with a marker of participation having been ordered (Wales)



Discussion

This research has extended our understanding of how many children participate in private family law cases in England and Wales. It has begun to unpick how levels of participation vary by child characteristics and region, and when participation takes place. It established that around half of children – 53.9% in England and 47.5% in Wales – were involved in a case with one or more marker that they may have been directly involved in proceedings within three years of the case starting. These markers of participation – that a section 7 report/Child Impact Analysis, section 37 report, or rule 16.4 guardian appointment was ordered by the court – would usually involve direct consultation or engagement with children, depending on their age and maturity. In this study, we have assumed that every child in a case where one of these markers of participation was ordered will have been consulted. Nevertheless, it appears that around half of children in a section 8 child arrangements case starting in 2019 did not have an opportunity to have their voices heard.

When we consider the extent to which children's characteristics influence participation, the most significant finding is that of surprisingly little variation by age. In England, while around half of the youngest children were in a case with one or more markers of participation, this rose only slightly for older children. Two-fifths of children aged 10 to 13 and a greater proportion of older teenagers had no indication that they had formally participated in proceedings. In Wales, there was greater fluctuation, but a similar pattern was seen. The lack of variation by age may be a result of the mechanisms for participation being principally reports relating to welfare, with the type of safeguarding concerns that trigger the ordering of reports not necessarily variable by age. But this does suggest that a child's right to participate and the weight and importance of their wishes and feelings – in light of their age and understanding – is not being fully reflected in the current system, which does not offer routine involvement for older children, outside of these primary routes.

In England, but not in Wales, there was a small variation in the levels of participation by area-level deprivation, with children living in more deprived areas slightly more likely to have markers that they participated in proceedings. The wider research on children's services involvement demonstrates increased markers of child protection concern in areas with higher levels of deprivation (Bywaters et al. 2016). Thus, it is perhaps surprising that the use of welfare reports in private law cases (the major markers of participation used in this study) is not more heavily weighted to more deprived areas. More research is needed to explore this further, including whether other factors, such as legal representation and tier of judiciary, also have an impact.

The proportion of children who had a marker of participation varied between England and Wales, by court circuit, and within the English circuits by DFJ area. However, this research and the variation it uncovers does raise concern that the ability of children to participate in proceedings might be based on systemic factors rather than decision making purely focused on their rights and welfare needs. There is a need to further investigate the drivers of this variation, which might include area-level deprivation, local policy and culture, but may also be a response to the availability of resources.

These findings raise questions about how, in cases with no markers that children have participated in proceedings, the court was able to consider the child's 'ascertainable wishes and feelings, in light of their age and understanding', as part of the Welfare Checklist (Children Act 1989, s1 (3)). Unlike in public law proceedings, children in private law proceedings are not automatically represented, and under the current framework in England and Wales, there is no universal mechanism for children to express their wishes and feelings directly to the court, despite the hugely consequential nature of these cases.

The CAP is not designed in a way that enables participation by all, or a majority of children, and in some ways, its laudable aims of supporting resolution through agreement between adults and minimising delay might actually restrict opportunities for children to participate and have their voices heard. The most common mechanisms for participation are welfare reports but these are usually only ordered by the courts when there is entrenched parental conflict or welfare concerns, which necessitate in-depth exploration of the family's circumstances, including direct work with children. This is very different to a system where involvement is entirely predicated on ensuring the child's right to participate and be heard is upheld.

The pilot Pathfinder Courts, introduced in North Wales and Dorset in early 2022, takes a problem-solving, domestic abuse-informed approach to dealing with cases involving disputes between parents over arrangements for children. Like CAP, the Pathfinder model seeks to support resolution by agreement where appropriate and reduce delay for the child, but this model is also explicitly focused on ensuring that the voice of the child is heard. A new practice direction (PD36Z) allows for the preparation of a Child Impact Report before the first hearing. This provides for engagement with the child before the first hearing to determine their circumstances, preferences for engagement and initial wishes and feelings at the outset of proceedings. While formal evaluation is pending, there have been calls for the Pathfinder model to be rolled out nationally (Domestic Abuse Commissioner 2023).

If the evaluation reveals this model is enabling greater levels of participation and involvement, further role out of the Pathfinder model would appear to be a way to enhance the voice of the child and introduce a mechanism through which all children have the opportunity for their wishes and feelings to be acknowledged from the start, not just in those cases where welfare issues are subsequently identified.

All research based on administrative data is necessarily limited by the scope and quality of the available data. It is worth noting here that there are a number of other important ways in which children might engage with proceedings, such as meeting with or writing to the judge, or engaging with experts such as psychologists or independent social workers, or commissioned services, but these are not currently recorded in the administrative data. It is worth highlighting that ethnicity information was not available in Cafcass Cymru administrative data and the high levels of missing ethnicity data for children in England prevented the comparison of levels of participation for children from different ethnic groups. In terms of understanding how children's characteristics relate to their opportunities to participate, the absence of this comparison is a significant limitation of this study. Continued improvements in the consistent recording of ethnicity will enhance our understanding of ethnic diversity in the family justice system.

Conclusions

A child's right to participate in private law proceedings, where hugely important and potentially life-changing decisions are made about them, is enshrined in law. And yet, this study found that around half of children, including older children and teenagers, did not have any indicators that they had been consulted directly by someone independent from their family. Further research is needed to understand, for those children for whom there were such markers, how participation was experienced and the extent to which their views were listened to and acted on, in accordance with their article 12 rights.

The challenge to the family justice system as a whole is to reflect on the policy, practice and resource changes needed to ensure that mechanisms are in place that give children meaningful opportunities to have their voices heard, both to ensure children's rights are upheld and to support decision making in the best interests of children.

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Appendix A

Table A.1: Cafcass data (England): Number of children with and without marker(s) of participation within three years of the case start date by characteristics

	Children with no marker of participation		Children with marker(s) of participation		Total
	N	%	N	%	N
Cohort	28,949	46.1%	33,783	53.9%	62,732
Age of child					
0	1,334	48.3%	1,426	51.7%	2,760
1	1,963	49.3%	2,021	50.7%	3,984
2	2,165	48.6%	2,294	51.4%	4,459
3	2,517	48.8%	2,641	51.2%	5,158
4	2,594	48.6%	2,739	51.4%	5,333
5	2,534	48.0%	2,747	52.0%	5,281
6	2,532	47.3%	2,816	52.7%	5,348
7	2,418	45.1%	2,946	54.9%	5,364
8	2,159	44.1%	2,742	55.9%	4,901
9	2,034	43.2%	2,679	56.8%	4,713
10	1,723	42.4%	2,344	57.6%	4,067
11	1,404	41.1%	2,013	58.9%	3,417
12	1,133	42.2%	1,555	57.8%	2,688
13	868	42.0%	1,198	58.0%	2,066
14	705	46.4%	814	53.6%	1,519
15	519	50.8%	502	49.2%	1,021
16	241	52.2%	221	47.8%	462
17	106	55.5%	85	44.5%	191
Gender of child					
Male	14,955	46.4%	17,253	53.6%	30,494
Female	13,984	45.9%	16,510	54.1%	32,208
Missing	10	-	20	-	30
Proportion missing	0.0%	-	0.1%	-	0.0%
Area-level deprivation of child					
Most deprived - Quintile 1	7,472	43.9%	9,550	56.1%	17,022
Quintile 2	5,569	45.4%	6,694	54.6%	12,263
Quintile 3	4,866	47.0%	5,479	53.0%	10,345
Quintile 4	4,265	48.5%	4,522	51.5%	8,787
Least deprived - Quintile 5	3,776	49.4%	3,870	50.6%	7,646
Missing	3,001	-	3,668	-	6,669
Proportion missing	10.4%	-	10.9%	-	10.6%
Number of children within the child's case					
1 child	12,188	50.4%	12,017	49.6%	24,205
2 children	11,274	45.4%	13,542	54.6%	24,816
3 or more children	5,487	40.0%	8,224	60.0%	13,711
Court circuit area					
London	3,077	43.8%	3,955	56.2%	7,032
Midlands	4,959	40.2%	7,382	59.8%	12,341
North East	4,477	41.4%	6,332	58.6%	10,809
North West	4,349	46.1%	5,078	53.9%	9,427
South East	7,005	47.9%	7,626	52.1%	14,631
South West	5,071	59.9%	3,392	40.1%	8,463
Missing	11	-	18	-	29
Proportion missing	0.0%	-	0.1%	-	0.0%

	Children with no marker of participation		Children with marker(s) of participation		Total
	N	%	N	%	N
Cohort	28,949	46.1%	33,783	53.9%	62,732
Designated family judge area					
Central London	898	48.1%	968	51.9%	1,866
East London	1,145	39.0%	1,789	61.0%	2,934
West London	1,034	46.3%	1,198	53.7%	2,232
Birmingham	902	38.5%	1,440	61.5%	2,342
Coventry	383	40.2%	569	59.8%	952
Derby	476	45.6%	568	54.4%	1,044
Leicester	468	39.6%	714	60.4%	1,182
Lincoln	332	42.5%	449	57.5%	781
Northampton	367	42.2%	503	57.8%	870
Nottingham	568	38.9%	893	61.1%	1,461
Stoke on Trent	380	41.6%	533	58.4%	913
Wolverhampton/Telford	784	39.5%	1,201	60.5%	1,985
Worcester	299	36.9%	512	63.1%	811
Cleveland and South Durham	413	36.4%	723	63.6%	1,136
Humberside (and North Lincolnshire)	508	39.5%	779	60.5%	1,287
North Yorkshire	336	37.5%	560	62.5%	896
Northumbria and North Durham	1,022	43.6%	1,321	56.4%	2,343
South Yorkshire	684	38.3%	1,103	61.7%	1,787
(Leeds and) West Yorkshire	1,514	45.1%	1,846	54.9%	3,360
Blackburn/Lancaster	961	44.3%	1,210	55.7%	2,171
Carlisle	224	43.3%	293	56.7%	517
Liverpool	1,680	52.9%	1,497	47.1%	3,177
Manchester	1,484	41.7%	2,078	58.3%	3,562
Brighton	726	52.0%	671	48.0%	1,397
Essex and Suffolk	1,282	41.7%	1,791	58.3%	3,073
Guildford	537	52.0%	495	48.0%	1,032
Luton	336	44.5%	419	55.5%	755
Medway	1,262	53.2%	1,109	46.8%	2,371
Milton Keynes	642	47.9%	699	52.1%	1,341
Norwich	466	43.6%	604	56.4%	1,070
Peterborough	518	44.9%	636	55.1%	1,154
Reading/Slough	681	58.6%	482	41.4%	1,163
Watford	555	43.5%	720	56.5%	1,275
Bournemouth and Dorset	462	58.0%	335	42.0%	797
Bristol (Avon, North Somerset and Gloucestershire)	1,024	59.6%	694	40.4%	1,718
Devon	909	58.7%	639	41.3%	1,548
Portsmouth (Hampshire/Isle of Wight)	1,419	60.6%	924	39.4%	2,343
Swindon	431	58.8%	302	41.2%	733
Taunton	369	60.0%	246	40.0%	615
Truro	457	64.5%	252	35.5%	709
<i>Missing</i>	<i>11</i>	<i>-</i>	<i>18</i>	<i>-</i>	<i>29</i>
<i>Proportion missing</i>	<i>0.0%</i>	<i>-</i>	<i>0.1%</i>	<i>-</i>	<i>0.0%</i>

Table A.2: Cafcass Cymru data (Wales). Number of children with and without marker(s) of participation within three years of the case start date by characteristics

	Children with no marker of participation		Children with marker(s) of participation		Total N
	N	%	N	%	
Cohort	2,254	52.5%	2,039	47.5%	4,293
Age of child					
0	107	56.9%	81	43.1%	188
1	160	57.6%	118	42.4%	278
2	171	55.5%	137	44.5%	308
3	207	59.1%	143	40.9%	350
4	206	58.0%	149	42.0%	355
5	216	57.9%	157	42.1%	373
6	205	49.8%	207	50.2%	412
7	211	56.3%	164	43.7%	375
8	172	49.1%	178	50.9%	350
9	151	47.3%	168	52.7%	319
10	148	53.0%	131	47.0%	279
11	105	42.7%	141	57.3%	246
12	73	42.7%	98	57.3%	171
13	54	42.9%	72	57.1%	126
14	32	39.0%	50	61.0%	82
15	15	34.1%	29	65.9%	44
16-17*	21	56.8%	16	43.2%	37
Gender of child					
Male	1,120	52.6%	1,008	47.4%	2,128
Female	1,102	52.3%	1,007	47.7%	2,109
Missing	32	-	24	-	56
Proportion missing	1.4%	-	1.2%	-	1.3%
Area-level deprivation of child					
Most deprived - Quintile 1	616	51.7%	575	48.3%	1,191
Quintile 2	513	53.1%	454	46.9%	967
Quintile 3	362	49.1%	375	50.9%	737
Quintile 4	356	55.7%	283	44.3%	639
Least deprived - Quintile 5	310	55.3%	251	44.7%	561
Missing	97	-	101	-	198
Proportion missing	4.3%	-	5.0%	-	4.6%
Number of children within the child's case					
1 child	993	56.5%	763	43.5%	1,756
2 children	852	52.0%	786	48.0%	1,638
3 or more children	409	45.5%	490	54.5%	899
Designated Family Judge area					
South East Wales	1,012	50.5%	993	49.5%	2,005
North Wales	410	54.4%	344	45.6%	754
Swansea	788	55.0%	644	45.0%	1,432
Missing	44	-	58	-	102
Proportion missing	2.0%	-	2.8%	-	2.4%

*Ages 16 and 17 merged due to small numbers

Nuffield Family Justice Observatory

Nuffield Family Justice Observatory (Nuffield FJO) aims to support the best possible decisions for children by improving the use of data and research evidence in the family justice system in England and Wales. Covering both public and private law, Nuffield FJO provides accessible analysis and research for professionals working in the family courts.

Nuffield FJO was established by the Nuffield Foundation, an independent charitable trust with a mission to advance social well-being. The Foundation funds research that informs social policy, primarily in education, welfare and justice. It also funds student programmes for young people to develop skills and confidence in quantitative and scientific methods. The Nuffield Foundation is the founder and co-funder of the Ada Lovelace Institute and the Nuffield Council on Bioethics.

Family Justice Data Partnership

The Family Justice Data Partnership is a collaboration between Lancaster University and Swansea University, with Cafcass and Cafcass Cymru as integral stakeholders. It is funded by Nuffield Family Justice Observatory.

SAIL Databank

Cafcass and Cafcass Cymru data used in this study is available from the Secure Anonymised Information Linkage (SAIL) Databank at Swansea University, Swansea, UK, which is part of the national e-health records research infrastructure for Wales. Approval for the project was granted by the Information Governance Review Panel (IGRP) under SAIL project 0990. When access has been granted, it is gained through a privacy-protecting safe-haven and remote access system, referred to as the SAIL Gateway. Anyone wishing to access data should follow the application process guidelines available at: www.saildatabank.com/application-process



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