A Foucauldian Discourse Analysis of Educational Psychologists’ Accounts of their Understanding and Enactment of the United Nations Convention on the Rights of the Child

A thesis submitted to The University of Manchester for the degree of Doctor of Philosophy in the Faculty of Humanities

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Laura Goodfellow

School of Environment, Education and Development
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<td>Person-centred Planning</td>
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<td>Local Authority, Local Authorities or Local Authority’s</td>
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<td>Special Educational Needs and Disability</td>
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Abstract

The United Nations Convention on the Rights of the Child (UNCRC) is a key international legal instrument setting out children’s civil, political, economic, social and cultural rights. As a document the UNCRC, internationally, informs policy, practice and research becoming a normative framework for the protection, provision and participation of children. However, implementation of the UNCRC at local levels in the UK still requires further development.

Through a Foucauldian Discourse approach, this doctoral thesis explores educational psychologists’ (EPs’) accounts of their understanding and enactment of the United Nations Convention on the Rights of the Child. This includes a review of the legislative and organisational context of educational psychology, alongside a Foucauldian Discourse Analysis of accounts of practice from EPs working in an English context.

Analysis highlighted that the UNCRC was known to EPs, but its status as a document underpinning and explicitly influencing practice within the profession contested. EPs drew on commonly deployed discourses of children’s rights, notably participation, consultation, views and voice to narrate their understanding and enactment of the UNCRC, demonstrating the strength of participatory practices, but also indicating how work is still required in progressing the development of the UNCRC. EPs are faced with particular practice dilemmas in navigating between constructions of children’s needs and how these both inform and limit children’s rights practice. Nevertheless, EPs also offered critique of these practices signifying the scope within the educational psychology profession to incorporate and further enhance rights-informed practice. While the claims made are subject to the conditions which constructed this doctoral research, the critique of discourses of children’s rights which dominant EPs’ practice illuminates the ways in which the UNCRC is subject to institutional and practice discourses in constituting how it is understood and enacted in a specific but key professional practice context.
DECLARATION

No portion of the work referred to in the thesis has been submitted in support of an application for another degree or qualification of this or any other university or other institute of learning.

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Last, but not least, I would like to especially give my heartfelt thanks to my supervisor Professor Erica Burman, for her patience, support and advocacy throughout my time as a doctoral student. She has been the most wonderful and inspiring supervisor, who I am grateful to have had spurring me on over the last few years.
Chapter 1- Introduction

The aim of this doctoral research is to explore, conceptualise and critique how educational psychologists (EPs) in England account for their understanding and enactment of the United Nations Convention on the Rights of the Child (UNCRC, 1989). Educational psychology can be understood as both the application of psychological theory and the development of understanding and knowledge of human behaviour in educational settings through research and practice (Wittrock, 1992). Educational psychology is the delivery of psychological services to children, young people, parents and teachers. EP practice can involve the individual assessment of children who have cognitive, emotional, social or behavioural difficulties, the development and implementation of school wide interventions, and consultation with parents, carers and schools (Jimerson et al., 2007). In a UK context, and specifically England, an EP refers to both practitioner and academic psychologists working in educational contexts (Birch et al., 2015), typically within or associated to a Local Authority (LA)\(^1\) (Squires and Farrell, 2007). The EP role in England is related, but also different to what is often called school psychology in the United States of America (USA) and other European countries. In the USA, educational psychology is typically related to research and teaching activity as opposed to school psychology which involves the practice and delivery of psychological services within an educational environment (Birch et al., 2015). For instance, school psychology in the USA is primarily school based, and while does not undertake the same statutory function as the EP role in England, largely performs similar tasks with regard to assessment of children and young people with learning needs, the provision of behavioural and psychological interventions and school wide support and collaboration (National Association of School Psychologists, 2021).

The focus of the doctoral research will be limited to EPs working within England, with specific focus on EPs practicing within the special educational needs legislative framework applied in England. EPs will typically operate within or in partnership with Local Authorities (LAs), which represent local government, responsible for the delivery of key services in a local area, such as social care, schools, housing and more (Local Government Association, 2021). In a UK context EPs typically take on a statutory role on behalf of LAs, formalised in the 1981 Education Act (Faupel and Norgate, 1993; Leadbetter and Arnold, 2013) to provide psychological advice for children and young people with special educational needs or a disability having a

\(^{1}\) A Local Authority is the system of local government that undertakes local government functions such as social care, public health, libraries, highways and traffic. Local Authorities will work in partnership with other national structures such as the National Health Service and other regional bodies such as the police and fire and rescue (Sandford, 2018).
statutory Education, Health and Care Plan assessment\(^2\) (previously ‘Statements’\(^3\)) (BPS, 2015). In this way, EPs are representatives of the state, with the state being the primary UNCRC duty-bearer, with those employed by the state having obligations to fulfil their duties under the UNCRC (Blanchet-Cohen and Bedeaux, 2014; Save the Children, 2007).

As I will come to explore, EPs, while subject to their own institutional and practitioner discourses, offer a case example of a professional group working within the context of Local Authority and education services in supporting the lives and education of children and young people, primarily those with special educational needs and/or a disability (SEND). In undertaking a Foucauldian Discourse Analysis of EPs’ accounts, this thesis will critically examine the UNCRC and broader discourses of children’s rights within the context of educational psychology. The position of EPs within the wider structures of children’s services, including for SEND means this research will have wider implications for those concerned with working from child rights based frameworks.

**Introducing the United Nations Convention on the Rights of the Child**

As an international document, the UNCRC\(^4\) has achieved nearly total ratification, except for the United States, establishing it as the most widely-ratified human rights convention (UNICEF, 2021). The UNCRC has become a significant document in shaping work with children and young people and in viewing them as rights holders and active agents in their lives (Holzscheiter, 2010; Liebel, 2012).

The UNCRC contains 54 Articles, setting out expectations regarding rights across all parts of a child’s life, including the civil, political, economic, social and cultural rights children are entitled, ensuring they are provided to survive and develop, be included and involved, to have the very best life possible (UNICEF, 2016). The UNCRC is underpinned by four general principles; non-discrimination (Article 2), best interests (Article 3), right to life, survival and development (Article 6) and the right to be heard (Article 12) (see Appendix A). In being the most comprehensive statement of children’s rights created (UNICEF, 2021), the UNCRC commits countries across the globe to upholding the rights of children in being a key legal framework for the international recognition of children’s rights (Doek, 2019) setting out how adults and governments need to work together to promote these rights (UNICEF, 2021). Specifically, General Comment 5 (CRC, 2003) specifies drawing on both legal measures and the incorporation of the UNCRC into domestic law, and non-legal and

\(^2\) An education, health and care plan (EHCP) is for children and young people up to aged 25 who require more support for their special educational needs or disability above what is available within the school context. The EHCP, is a legally binding document, which identifies the additional support required and resources needed to achieve this.

\(^3\) A statement of special needs outlined a child’s learning difficulties and the support required. These have been replaced by Education Health and Care Plans.

\(^4\) Somalia and South Sudan ratified the UNCRC in 2015.
indirect measures through establishing children’s rights structures and activities to promote children’s enjoyment of their rights, in order to reach full implementation of the UNCRC. Measures of implementation have remained on the agenda, with some States Parties opting for ‘indirect incorporation’ of the UNCRC with more recent debate concerned with efforts to ensure legal implementation (Gadda et al., 2019; p.317). While the power of the UNCRC is evident in its prominence across policy, practice and research, the transformative potential of the UNCRC is subject to much debate (Kirkelly and Lundy, 2006).


Measures of implementation in a UK context have become increasingly multifaceted as a result of the devolved powers of the four nations of the UK. The UNCRC was ratified by the UK in 1991 (UNICEF, 2018), thus committing to the expectations set out in the UNCRC of States Parties to meet their obligations to realising the rights of children. The UK government has committed to upholding and giving ‘due consideration’ to the UNCRC through legislation and policy (Written Ministerial Statements, 2010); thus the UNCRC has become an integral aspect in the development of legislation, policy and practice in the UK, referenced throughout academic and research literature, and included in a wide range of reports and research produced by government and third sector agencies (Wyness, 2018). However, the UK’s decision not to incorporate the UNCRC into domestic law has remained contentious, argued that without the full force of the law it has less extensive impact and represents a limited realisation of the UNCRC (James, 2008) where relevant authorities are expected, but not legally required to fulfil the requirements of the UNCRC (Lyon, 2007).

However, the UK government’s failure to fully incorporate the UNCRC into domestic law is seen as a barrier to its full realisation (CRAE, 2018). As I will come to discuss, rights outlined in the UNCRC are incorporated into the UK’s complex policy landscape. Notably, the Children Act 1989 sets out significant changes to ensuring the welfare and protection of children, particularly with regard to children having rights of their own (ACDS, 2019). Correspondingly, the Equality Act 2010 sets out legal protections which protect individuals against discrimination on the basis of certain protected characteristics, thus protecting children’s rights not to be discriminated against. However, while there are clear intersections with the UNCRC, such changes are typically implicitly linked, for instance the Equality Act 2010 does not explicitly reference the UNCRC. Thus it remains to be seen how such legal measures enable the realisation of the full rights of children and young people as

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5 Scotland, Wales and Northern Ireland have been afforded powers to make decisions formerly taken by the UK Parliament, such as in relation to education and health.
set out in the UNCRC, if children’s other rights, such as having their views heard and included, are infringed upon elsewhere.

Equally, the increasingly complex governance across the UK where devolved powers mean more decisions can be taken locally where Scotland, since the inception of this doctoral research, have passed an UNCRC Bill with a view to ensuring children’s rights are legally protected by law in Scotland (Scottish Parliament, 2021).

In the context of England, the UNCRC remains subject to what can be described as non-legal measures (Lyon, 2007). The UNCRC is seen to still have vast significance in influencing legislative frameworks and approaches to working with children and young people (Winter, 2011) and wide-reaching impact (James, 2008). However, UNCRC implementation relies on the UNCRC being used as a tool of interpretation (Gilmore, 2017) where competing constructions of policy by individuals, groups and government (Arnott, 2008) and institutional interpretations of childhood (Clark and Ziegler, 2014) may not be sufficient to ensure incorporation of rights-informed ideas (Lyle, 2014).

Practitioner Knowledge

Despite the prevalence of a discourse around children’s rights, both in the UK and England, it is posited that implementation of a child’s right to participate is still limited with current social practices and structures seen to currently fail in acknowledging children as participants in society (Coppock and Phillips, 2013). Enactment of the UNCRC in England is arguably dependent on the knowledge and commitment of institutions and practitioners as UNCRC duty-bearers in upholding the UNCRC. A review of the literature for this thesis indicated a scarcity of research concerning professionals’ understanding and knowledge of children’s rights. Data on UNCRC enactment in a UK context is largely through government reports to the Committee on Children’s Rights outlining the ways in which the UK have strengthened their commitments to the UNCRC, for instance, through creation of the Office of the Children’s Commission and changes in legislation (CRC, 2016). Notably, the Children’s Rights Alliance for England (CRAE), in championing children’s rights, produce their biannual State of Children’s Rights Report documenting progress and areas of concern. On a local level, Woods and Bond (2014) identified little independent evaluation of the enactment of the UNCRC and work is needed to establish UNCRC enactment strategies between national and local governance. Children’s participation rights within LAs and Children’s Services are seen to be limited or applied tokenistically (LeFrancois and Coppock, 2014) and participation in decision making can be institutionalised and adult regulated with consultation activities taking place in schools or Local Authorities to collect data to meet the needs of pre-existing agendas (Wyness, 2018).
At the practitioner level there is a dearth of research exploring knowledge and understanding of the UNCRC. Manful and McCrystal (2010) noted a lack of professional knowledge of the UNCRC, with Lundy (2007) identifying how successful implementation of Article 12 of the UNCRC was limited due to professionals’ lack of knowledge of the full content of the Article. In a report by CRAE (2009) investigating local implementation it was identified only 55% of Local Authorities (LAs) had ‘adopted’ the UNCRC, 77% of LAs do not refer to the UNCRC in their Children and Young People’s Plan, with one LA including the UNCRC in the job description of the Director of Children’s Services, consequently concluding how inadequate knowledge of the UNCRC as a significant challenge to upholding children’s rights. Jerome et al. (2015) established how England did not ensure trainee teachers were educated on the UNCRC. Lundy et al. (2015) reported that in Northern Ireland data does not exist regarding adults knowledge of the UNCRC. Similarly, it has not been possible to find such data in relation to other parts of the UK.

**Researcher Positioning**

I came to this project, not as an EP, but as a member of the wider children and young people’s workforce, with experience of the UNCRC and how children’s rights were considered and enacted within children’s services. My interest was not only in how EPs understood and enacted the UNCRC, but how this was situated and representative of wider institutional practices, particularly Local Authorities (LAs).

My previous experience included working in the third sector in partnership with LAs, as a children’s rights advocate, participation worker and later with young people who are reported missing. Certain roles had statutory duties, for example the duty to commission children’s rights advocacy for children and young people in care, services typically commissioned to be delivered to third sector organisations whose remit is to provide challenge back to the LA and advocate for children and young people. Young people reported missing from home must be offered a ‘return home interview’ within 72 hours of returning home. These experiences provided first hand insight into the tensions of balancing complex dichotomies of risk and protection (Tisdall and Punch, 2012; Tisdall, 2015) and realising the rights of children and young people to have their views given due weight under Article 12 of the UNCRC (UNICEF, 1989). Equally, working as a children’s participation worker, provided me with insight and experience regarding how LAs create mechanisms for children and young people to have a say about service development and the use of formal participation structures, such as Youth Councils and Children in Care Councils that facilitate children and young people to participate. Such practices are focused on creating spaces for children and young people to share their stories in shifting narratives and perspectives regarding their experiences. In working within such practices I mobilised my community psychology roots, drawing on participatory action research methodologies aimed at transformative change (McTaggart et al., 2017).
In contrast, LA participation is also driven by repeated requests for consultation and input around LAs’ strategic planning, with participatory roles and mechanisms typically formulated to perform a task and achieve an outcome, for example a policy change. Such participatory practices can be highly regulated, institutionally driven exercises, focused on the process of participation rather than changing outcomes (Tisdall et al., 2008) constructed by adults, often maintaining existing power inequalities between adults and children and young people (Percy-Smith, 2010). Within these formalised structures participation’s outcomes can be re-orientated to address adult agendas and policy goals rather than transformative change led by children and young people. This form of practice takes on a post-positivist quality, in which children are the objects of enquiry whose views are gathered as a form of empirical data to answer a particular problem or research question.

My research positioning with regards to undertaking this doctoral research was constructed largely through my professional life working as a children’s rights advocate and participation worker. The roles typically involve working with children and young people, predominantly those in care, who do not feel listened to, challenging practitioner’s decision making, alongside enabling children and young people to participate in decisions in countering participatory practices that seek to maintain adult agendas.

This positioning can risk an oppositional approach through the challenge of decisions and practices, though seeks to promote social justice, recognising that children and young people can be marginalised and their voices unheard. Advocates and participation workers traverse boundaries similarly to researchers. Advocates working with organisations, forge partnerships on the inside influencing policy change whilst simultaneously campaigning and challenging from the outside (McGhee et al., 2016). As practitioner, while my roles typically focused on achieving change for children and young people, in some circumstances extending to policy change, practice was orientated around how to improve conditions for children and young people. As a practitioner, I felt my role remained subjugated compared to those who I wished to confront regarding knowledge of the UNCRC and their mechanisms of enactment. In undertaking this research, I aimed to explore and address the knowledge gap in relation to how practitioners, in this case EPs, account for their understanding and enactment of the UNCRC. Importantly, however, researchers also traverse boundaries which correspond with the experience of advocates, particularly in ethnographic and action research methodologies where researchers develop partnerships to collaborate with insider practitioners, though often situated outside the organisation. Thus, underpinning this research is also how EP practitioners respond and collaborate with task of exploring and problematizing children’s rights knowledge.
Research Aim

It is not possible to fully account for the extent of practitioner knowledge regarding the UNCRC across England. Crucially, professional knowledge is often bound to institutional practices, largely eschewing academic publications, thus this research is not to imply that EPs, or indeed other practitioner groups are not introduced to the principles of the UNCRC during professional training and development. Nevertheless, as I will come to explore, the status, and subsequently the understanding and enactment of the UNCRC remains contested. Through exploring the legislative and organisation context underpinning educational psychology and interviewing EPs, this doctoral research will explore how EPs’ account for their understanding and enactment of the UNCRC.

Research Questions

1. What legislative and organisational context supports the understanding and enactment of the UNCRC in educational psychology in England?

2. How do educational psychologists working in an English context account for their understanding, experiences and enactment of the UNCRC in educational psychology practice in England?

3. What are the dominant discourses of children’s rights in current educational psychologist accounts in England?

In answering these research questions this thesis will undertake a critical review of the literature in Chapter 2, followed by the theoretical foundations and methodological approaches drawn upon to analyse accounts from EPs. Chapter 4 will introduce the policy context, followed by an analysis of the accounts of EPs explore throughout Chapters 5, 6, 7, 8 and 9. Chapter 10 will conclude the main findings and consider the implications for policy, practice and future research.
Chapter 2 – Literature Review

The United Nations Convention on the Rights of the Child (UNCRC) (Appendix A) is a key legal framework for the international recognition of children’s rights (Doek, 2019), potentially giving substantial power to children as rights holders (Zermatten, 2010), representing a ‘globally applicable code of individual rights for all children’ (Grugel, 2013; p.21). The UNCRC requires States Parties to commit to implementing the UNCRC, committing to ensuring the principles and provisions of the UNCRC are widely known (see Article 42, UNCRC; UNICEF, 1989). The UNCRC underpins a raft of children’s rights initiatives (Grugel, 2013) and has entered the UK policy landscape, commonly cited across children and young people’s policy and legislation. Those with responsibilities towards children and young people are said to be UNCRC duty-bearers, obligated to uphold children’s rights (Blanchet-Cohen and Bedeaux, 2014; Save the Children, 2007). Educational psychologists (EPs) are duty-bearers, having, as I will come to explore throughout this thesis, responsibilities to uphold the UNCRC. This doctoral research aims to explore EPs’ accounts of how they understand and enact their duties under the UNCRC.

This review sets out to provide an overview of the key tenets of the UNCRC, including some of its theoretical underpinnings, alongside consideration of how children are the subject of rights. Such a review will illustrate the discourses on which children’s rights practice, including in educational psychology is formed. The UNCRC, considered to have transformative potential (Melton, 2008; Sargeant, 2018; Teamey and Hinton, 2014), is also critiqued in challenging practices of consensus building favouring implementation research (Reynaert et al., 2009; Quennerstedt, 2013), underpinned by a lack of theorisation in the field (Quennerstedt, 2013). Therefore, the review will explore some of the conceptual foundations of which the UNCRC is built upon, but also seek to critique key discourses central to the UNCRC and common to the language of children’s practitioners, such as working in a child’s best interests and children’s participation. The latter half of the review will explore the role of the EP and how the UNCRC and wider frameworks of children’s rights are debated in the academic literature.


The UNCRC is depicted as human rights for children (UNICEF, 2021b). Together with twentieth century shifts in how children were perceived, children have been seen as the subject of rights (Clark and Ziegler, 2014; (Sargeant and Harcourt, 2012; Smeyers, 2010; Zermatten, 2010). The advent of the UNCRC is considered to progress views of children which extend beyond welfare and paternalism to children as rights holders (Verhellen, 2015).
Thus, exploring enactment of the UNCRC ushers in debates of what it means to be a rights holder, if children have rights and can claim their own rights as children (Federle, 1994).

Rights are what one possesses, equal and universal to all, on the basis of being human (Donnelly, 2007). Rights can be understood as natural rights, what one was born with (Odysseos, 2010; Campbell, 2005), reflecting natural law theories where rights cannot be taken away (O’Byrne, 2013). In contrast, rights can be defined as legally enforceable expectations of how others, notably States, act toward others regarding what one is entitled to (Woodiwiss, 2005). Human rights are described as ‘equal and inalienable’ rights outlining the freedoms and entitlements applicable to all humans (UN General Assembly, 1948), therefore, human rights are universal, held universally by all (Donnelly, 2007). For instance, the UNCRC promotes a discourse of the universality of rights, applicable to all children (UNICEF, 1989), indicative of human rights documents which seek to ensure the rights of all people (Brabeck and Rogers, 2000). Nevertheless, the status of human rights as universal is contested as while everyone is entitled to human rights, they are not necessarily realised for all (Donnelly, 2007).

Therefore, despite the inalienability claimed for human rights, certain groups are considered to need further protections. The UNCRC is portrayed as an internal legal framework for children (Gillett-Swan and Coppock, 2016), acknowledging children have civil, political, economic, cultural and social rights, which goes beyond concern for children’s welfare through protection rights but adopts a wider perspective that incorporates citizenship for children (Roche, 1999). However, closer analysis of the UNCRC reveals differences in how children’s rights are understood in relation to human rights (Freeman, 2009; Cordero Arce, 2012). Children being recognised as a different social group makes children visible but also inherently different to adults (Holzscheiter, 2010). Nonetheless, children requiring an alternative human rights instrument to that of the Universal Declaration of Human Rights (UDHR), implies that children and their rights, are different in some way to that of the humans outlined in the UDHR (Cordero Arce, 2012). For example, the UNCRC states in its preamble states how ‘the United Nations has proclaimed that childhood is entitled to special care and assistance’ (UNICEF, 1989; p.3), though simultaneously highlighting how more generic human rights documents do not necessarily offer protection to more vulnerable groups. This is also illustrated by other group specific international rights documents such as the Convention on the Rights of Persons with Disabilities (CRPD) (United Nations, 2007), created in an effort to strengthen the rights and inclusion of disabled people and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (UN, 1979). However, similar to the creation of the UNCRC on the basis of a need for special assistance, the documents also emphasise the continued vulnerabilities of certain groups. Nevertheless, such documents draw attention to rights and their ‘high normative force that demands our attention’ (Campbell, 2003; p.3) and their
potentially powerful effect, adding status to children’s rights (Holzscheiter, 2011a) and arguably the rights of other marginalised groups.

Conversely, however, in exploring the intersection of human and women’s rights, Engle (1991) argued that human rights law is dominated by men and maintains the subjugation of women, suggesting that human rights instruments fail to protect the rights of many of humankind. In this way, the creation of additional human rights instruments draws attention to potential human rights abuses. In this way human rights instruments can be regarded to protect the most marginalised, improving awareness of human rights and their violations (Brabeck and Rogers, 2000), aiming to empower the less powerful and challenge the status quo (O’Neill, 1992). However, O’Neill (1992) argues that children’s dependence on others is different to the dependence of other oppressed social categories. As Cowden (2012) proposes, children can only have rights when they have the competence and power to claim such rights. In the context of the UNCRC, provisions for children’s autonomy and choice, most notably in the form of Article 12 (1), as I will come to discuss later in this chapter, highlights the role of children’s capabilities in forming their own views and giving these views ‘due weight’ being dependent on age and maturity (UNICEF, 1989). Consequently children’s decision making and rights are mediated by adults (Liebel, 2014). This is compounded by the implementation of the UNCRC largely resting around non-legal measures (Gadda et al., 2019). Different to other protected categories in legislation in England and the wider UK, the Equality Act 2010 provides a legal framework the discrimination of a range of protected categories on the basis of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation. However, children cannot be discriminated against on the basis of their younger age and are only protected in relation to work (Flacks, 2014). This is representative of wider structures where institutionally and structurally certain groups and individuals are recognised as being vulnerable and at more at risk of marginalisation, reflected in the creation of international conventions created to protect these groups. This highlights the ongoing marginalisation of certain people and groups where there is a requirement for these individuals and groups to receive special consideration and illustrates an ongoing inequality and inequity to the rights of all people.

Subsequently, a ‘disjuncture’ continues to exist between the development of children as rights holders and development and capability discourses (Grugel, 2013; p.19). Rights conceptualised in this way is indicative of central arguments across children’s rights where if rights seen worthy of protection require a duty on others to uphold then can children also be seen as a capable beings (Federle, 1994). This plays into discourses of childhood where children are seen as becomings, yet to be citizens, still developing and viewed as immature, incapable, needy, and dependent where the UNCRC replicates and reproduces hegemonic constructions of childhood (Cordero Arce, 2015; Prout, 2005).
'New' Sociology of Childhood

The development of children’s rights theories and children as rights holders globally is closely aligned with shifts in the status of children and childhood. The ‘new’ sociology of childhood arose from critique of dominant perspectives of child development (Tisdall and Punch, 2012), challenging leading frameworks and the presumed ‘rationality’, ‘naturalness’, and ‘universality’ of childhood, underpinned by theories of development formed on biological immaturity, for example, dependency (Prout and James, 2015). It is argued that childhood is not a natural or universal factor of humans, but is socially and culturally constructed, different from biological immaturity (Prout and James, 2015). This shifts understandings of childhood away from being informed by development (Woodhead, 2015) where development is viewed as a natural and anticipated trajectory (Burman, 2017).

Jenks (2005) argues how such perspectives see the child as socially constituted within certain historical periods, and maintained through the institutional structures and discourses, only to be imagined in relation to the construction of or other to the adult, stating

As a consequence of the adult member being regarded within theory as mature, rational and competent (all as natural dispositions), the child is viewed, in juxtaposition, as less than fully human, unfinished or incomplete. Such dichotomous discrimination in terms of socio-cognitive competence assumes its most explicit form in theories concerned with the learning process. It is in this context that the idea of becoming adult is taken to delineate a singular and highly specific mode of rationality. (Jenks, 2005; p.19)

Children as the subject of rights

How children are perceived as rational and capable beings informs understandings of children as rights holders, considered through two competing accounts. Will theory conceptualises rights as the protection of the right to choose (Archard, 2015), however, this is reliant on a child’s competence and maturity to make a ‘rational’ choice to realise one’s right (Cowden, 2016), thus children are subjects able to make rational and autonomous choices. However, the capacity of children to be full rights holders enacting their citizenship is typically denied on the grounds of immaturity, incompetence and irrationality (Cordero Arce, 2012). Notably children are denied political and democratic citizenship, such as not being legally eligible to vote (Kulynych, 2001; Nolan, 2010) and significantly, are still legally children according to the UNCRC, notwithstanding a series of caveats, subject to analysis later in this thesis (Chapter 9), where children are afforded legal status to consent to sex (Whittington, 2019) and post-16 seen to have a developing competence to enter into contractual agreements (Cockburn, 2013). Therefore, according to will theory, if someone is seen not to be
competent to enforce their own rights then they are not a rights holder (Cowden, 2016), though Archard (2015) argues that a ‘will’ theorist could request someone to uphold a child’s rights on their behalf if they are unable to fully participate in a decision. Much in the same way, interest theory sees a right as something of such importance that a duty is imposed on others to ensure individuals enjoy such a right (Archard, 2015). It is argued that both theories fail as explanations of children’s rights (Ferguson, 2013), doing little to resolve how children are seen as rights holders with both theories vulnerable to children’s rights only being enacted on their behalf.

**Best Interests**

The ways in which children are seen as the subject of rights, in requiring protection or in being able to exercise their own rights, is bound up with the best interest guiding principle of the UNCRC (UNICEF, 1989) enshrined in Articles 3 (best interests of the child). The requirement for best interests to be primary consideration is central to policy making within the UK (James, 2008; James & Lane, 2018; Moosa-Mitha, 2016; Taylor, 2016), typically claimed to underpin other aspects of rights (Thomas and O’Kane, 1998).

The best interest principle is often recognised as being situated within protectionist frameworks where decisions are taken to protect the well-being of the child (LeFrançois, 2008; Gillett-Swan and Van Leent, 2019; Zermatten, 2010). Children who are not viewed as having adequate capacity or competency are then subject to evaluations by others of their best interests in order to protect their immaturity and vulnerability (Tisdall, 2018).

Nevertheless, concepts of welfare, best interests and rights should be balanced with what could be considered a more paternalistic viewpoint, where adults think they know what is best for a child, with what the child themselves sees as being best for them (Archard and Skivenes, 2009). While the principle of best interest must be primary consideration (Eekelaar, 2015; Taylor, 2016) the UNCRC sets out that States Parties will uphold the UNCRC without discrimination, not prioritising one right over another (Archard and Skivenes, 2009; Lansdown, 2011). However, the principle of best interest can often be seen to conflict with another guiding principle – Article 12 and a child’s right to have their views taken in account (UNCRC, 1989), with deliberating on how to deliver what can be seen as opposing priorities an established argument within children’s rights literature (Thomas and O’Kane, 1998).

While there are clear demands in public policy to include and give account to children’s views in decision making (Thomas and O’Kane, 1998), the overarching discourse within children’s legislation and policy has been to reassert a protectionist strategy of care and control, consequently strengthening the interests of adults and their claims to the welfare of children (Wyness, 1996). Paternalistic protectionist stances form the
basis of the actions and decisions of benevolent and well-intentioned adults (Gillett-Swan and van Leent, 2019) grounded in beliefs where adults know what is in the best interests of a child (van Bijleveld et al., 2015). Children’s right to participate are overridden and constrained due to the welfare concerns of adults (Tisdall, 2016; Tisdall, 2018; van Bijleveld et al., 2015) with the view being taken that participation will be a burden to children (van Bijleveld et al., 2015). For instance, as Gillett-Swan and van Leent (2019) argue, best interest is frequently used to circumvent sensitive or contentious decisions and protect children from certain information.

Children’s Participation

Children’s participation has emerged as a central theme within childhood studies and children’s policy and practice (Percy-Smith and Thomas, 2010; Tisdall and Punch, 2012; Wyness, 2006; Wyness, 2018). This coincides with the ratification of the UNCRC (1989) and its commitment to the right to be heard and be involved in decision making as outlined in Article 12 and 13, acting as a ‘catalyst’ for the promotion of children’s participation rights (McMellon & Tisdall, 2020; p.158). The development of the participation discourse is, in part, underpinned by what can be described as a recognition of children as social and political actors with associated rights to participate in decision making (Kjorholt, 2008). Some of this shift in discourse is seen to be underpinned by a paradigm shift influenced by the ‘new sociology of childhood’ that allowed for the voices and visibility of a group previously silenced based on their age (Vandenbroeck and Bourverne-De Bie, 2006).

However, while children’s rights, and subsequently children’s participation are high on the political agenda questions are posed regarding the processes and structures surrounding children themselves, seen to be highly regulatory systems where children are afforded only restricted levels of autonomy (Wyness, 2006). Children are promoted as having greater autonomy and influence, yet retain their ‘apolitical status’ (Wyness, 2006; p.210) with the UNCRC not proposing that children have a right to political participation (Kulynych, 2001).

Nevertheless, ‘participation’, across childhood studies and practice, has become an ‘orthodoxy within the field’ (p.53) leading to the diverse forms, types and authenticity of children’s participation being subject to critique (Wyness, 2018). It is proposed, by van Bijleveld et al., (2015) that challenges with implementation and evaluation of participation results from a lack of consensus on what participation involves. Thus, participation
is imbued with theoretical and empirical assumptions (Wyness, 2018), whose consequences and contradictions in policy and practice form the substantive analysis of and for this thesis.

**Defining Participation**

Defining children’s participation is complex (Hester & Moore, 2018), with the term indicative of commitments to the UNCRC but also represent broader activities and discourses such as children’s voice, views and involvement (Sargeant, 2018). Participation can be defined as the ‘process of sharing decisions which affect one’s life and the life of the community in which one lives’ (Hart, 1992; p.5). Thomas, (2007) proposes that ‘participation’ is taking part in an activity or being part of decision making and can be both a process and an outcome.

**Participation and the UNCRC**

Children’s participation and ensuring children’s involvement in decisions that affect them forms a central aspect of the children’s rights movement (Hester and Moore, 2018) with the UNCRC placing it as a guiding principle, underpinning the achievement of other rights (UNICEF, 2006; General Comment No 5; 2003).

Article 12 (1) of the UNCRC outlines:

> States 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 view of the child being given due weight in accordance with the age and maturity of the child. (UNICEF, 1989)

While Article 12 is probably the most widely cited of the UNCRC (Lundy, 2007), with a clear prevalence in UK policy texts, and suggested by some to be the most significant (Van Buren, 1995; Lansdown, 2011), participation rights are underpinned by a series of Articles. Alongside Article 12, these include: Article 13 and the right to freedom of expression; Article 14 affords children freedom of thought, conscience and religion; Article 15 and freedom of association; Article 16 promotes right to privacy; and Article 17, which outlines the right to information (UNICEF, 2019). Despite General Comment 12 (CRC, 2009) promoting a more holistic conceptualisation of participation, incorporating concerns with civic engagement, information, dialogue and responsibility in creating citizenry through attention to the collection of Articles (Lansdown, 2011), Article 12 continues to dominate, reflecting what has been argued to be a strong ‘preoccupation with voice’, privileged over other understandings of participation (Thomas, 2021; p.95). More recently, Lundy (2007) created a model of space, voice, audience and influence taking into account how children’s participation is beyond gathering their views, and needs to attend to their contextual environment. Still seen to be a normative conceptualisation of participation (Thomas, 2021), but constructing a mechanism which allows for
incorporating the factors which need to be considered when supporting children and young people to participate and going ‘beyond voice’ (Johnson, 2017; Lundy, 2007; Sargeant, 2018; Thomas, 2021).

Mechanisms of Participation

Participation is typically characterised through notions of consultation, views, voice and evaluation of what is ‘good’ participation, grounded in frameworks, such as Hart’s Ladder of Participation (1992) (Appendix B), which depicts a hierarchical conceptualisation of participation activity, with child led participation at the top of the ladder, with what is viewed as more tokenistic and manipulative forms placed on the lower rungs. Other commonly used frameworks include Treseder’s Degrees of Participation (1997) (Appendix C) and Hear by Right created by Participation Works, which looks across organisations values, structures and systems to embed participation (National Youth Agency, 2018), often, in my experience as a children’s participation worker, used in LA evaluation of participatory activity.

Participation practices, therefore, are often categorised into different activities, at points evaluated using the aforementioned frameworks, in exploring if it is ‘meaningful’ participation (Mayne and Howitt, 2019). However, the actualisation of children’s participation is far more complex. This is arguably compounded by what Lundy (2007) highlights regarding how Article 12 while referenced regularly by policy makers and academics, is only occasionally cited in full. It is argued that a barrier to realisation of Article 12 is often limited awareness of the full remit of the provision (Lundy, 2007; Sargeant, 2018). Terms commonly deployed, such as ‘views’, ‘the voice of the child’, ‘the right to be heard’, the ‘right to participate’, ‘the right to be consulted’ (Lundy, 2007; p.930), ‘having a say’, ‘listening to children’s perspectives’ and ‘involving children’ (Percy-Smith, 2011; p.3) have become tantamount to children’s participation (Percy-Smith, 2011). This is argued to diminish the full meaning of Article 12, reducing the impact (Lundy, 2007), potentially eschewing requirements to give ‘due weight’ to children’s views (Daly, 2019).

In this way, it can be argued that the term participation, in deploying phrases such as being ‘listened to’ or ‘consulted’, connect with more ‘passive’ images of children (Sinclair, 2004; p.111) where practice is adult-led, adult-designed and conceived from an adult perspective (Kellett et al., 2004). Consultation, described as being enshrined in the UNCRC and the obligation of children’s practitioners (Kellett, 2009) does not actually feature in Article 12, often depicted as a lesser form of participation, sitting beneath what can be seen as more progressed forms of child-led participation (see Hart, 1992). Thus, Lansdown (2011) promotes the importance of extending practice beyond consultation as this can restrict children’s opportunities to influence the decisions and actions that effect their lives.
For many, consultation, similar to how other forms of participation are conceptualised, is related to the ways children have influence. For example, Tisdall (2015) describes that children and young people can be consulted but their views do not have a significant effect on decisions, with consultation seen to be occasional or intermittent and separate to standard practice, risks being perceived as tokenistic (Sargeant and Gillett-Swan, 2019), with a significant gap between rhetoric and practice (James, 2007).

Effecting influence through participatory activity is sometimes described as ‘active’ participation seen to reflect more empowering processes of influence, enabling change (Sinclair, 2004; p.111), and engaging children in a ‘meaningful’ way (Mayne and Howitt, 2019). Such approaches normally encapsulate what can be termed child-led or initiated approaches, shifting children from object to subject (Graham et al., 2017) with children supported to be active in the process (Kellett, 2011). Children can be enabled to direct research framed from below, where rights are defined by children, in supporting children as protagonists who contribute to generating conditions and opportunities for activism in the realisation of rights (Larkins et al., 2015). Others extend beyond how participation is conceptualised in the UNCRC promoting realising children’s rights through citizenship (Lister, 2007) in not only influencing decisions, but challenging social structures and the status of rights (Larkins, 2014).

However, concerns remain regarding the actualisation of participation in practice (Coppock & Phillips, 2013; Tisdall, 2018). For instance, Lundy (2018) argues that concerns about tokenism and resource availability to undertake participation adequately, often mean doing nothing at all over being perceived to be tokenistic, stating that from a human rights perspective no other right would be infringed upon due to a lack of resource. Lundy argues that the situation is more complex, but is careful to caution that in the context of individual decision-making where there is direct and immediate impact, justifying tokenistic practice is untenable. However, in the context of collective participation, Lundy states that children themselves rarely say tokenism, but describe experiences where their views have not been taken seriously, with tokenism referring to views being diminished or overlooked (ibid). This points to how concerns around participatory practice being as much about how a child’s views are received and acted upon as with the process of participation.

On an individual level, a child’s right to have their views heard permeates children’s policy with expectations written across a plethora of formal processes, for instance child in care reviews (Diaz et al., 2019; Pert et al. 2017; Thomas and O’Kane, 1999), child protection conferences (Cossar et al., 2016; Toros, 2020; van Bijleveld et al., 2015; van Bijleveld et al., 2020; Vis et al., 2011), health (Coyne et al., 2014), special educational needs assessments (Palikara et al., 2018) and the inclusion of disabled children and young people (Franklin and Sloper, 2006; 2009) to name a few. However, research suggests children often still feel excluded from decision making where children are afforded limited opportunities to influence decisions about their lives (Toros,
In some circumstances, children felt that their involvement had not made a difference (Kilkelly et al., 2004; van Bijleveld et al., 2015) or had their views overlooked in formal processes, for example family court proceedings (Tisdall, 2016). In this way, children’s participation can often be heavily dependent on adults’ authorisation of their participation rights. Tisdall (2018) identified how a court determined it was not appropriate to establish a child’s views due to determining what was in the child’s best interest superseded a child’s right to express their views, thus creating what Warrington and Larkins (2019) challenge as a ‘juxtaposition’ between children’s protection and participation.

Limiting Article 12

This idea of giving views ‘due weight’ is also a complex one, particularly if considered in line with a key caveat in Article 12 where ‘due weight’ is dependent on a child ‘capable of forming’ their own views and their ‘age and maturity’, with children being able to exercise their rights in line with their ‘evolving capacities’ (UNCRC, 1989). Commitment to ‘evolving capacities’ can be understood as an empowering principle supporting children’s developing agency (Varadan, 2019) indicative of efforts to afford increasing autonomy to children to exercise rights together with the protection of children according to their vulnerability and immaturity (Phillips and Coppock, 2014). The dependence on capability and maturity signalled concern for children’s rights advocates (Krappmann, 2010) with the risks determining children’s competence to express their views being evaluated on age and stage based developmental frameworks (Tisdall, 2018) in determining children’s right to participate. Despite the opposing views, Liebel (2014) argues that while adults determine capacities children’s rights are limited and conditional.

Child Voice and Views

The issues of the reduction of participation rights to voice and views, and the frequency of such terms, suggests the concept of ‘voice’ can be problematic, needing close critique (Arnot and Reay, 2007; Fielding, 2007; Kallio, 2011; Lundy, 2007; Noyes, 2005). Voice is often considered to be underpinned by Article 12 (Kallio, 2011), however, Sargeant (2018) identified a plethora of research utilising the terms ‘pupil voice’, ‘student voice’ or ‘child voice’, typically characterising research with a participatory focus, but standing distinct from rights, not referencing the UNCRC. In this way, the deferral to voice does not necessarily signify children’s rights and participation as outlined in the UNCRC.

Voice in itself reflects discourses where voice can mean ‘giving voice’ (Gorelick, 1991) or to enable those who are less power to speak up (Orme, 2003) with emancipatory intentions of unearthing silenced voices (Coddington, 2017). This notion of voice often refers to employing techniques, for example, interviews,
observation and oral history to gain access to experiences and perspectives of others (Clarke and Braun, 2019; Gorelick, 1991) using approaches that enable subjugated voices to be heard through addressing power imbalances (Orme, 2003). Correspondingly, it is seen as a way of gaining access to the silenced voices of children in efforts to develop understandings of childhood (Spyrou, 2011). However, the notion of voice is interlinked with particular relationships of power and how certain voices are framed in the elicitation of some over others (Arnott and Reay, 2007) or voices formed on ‘wrong childhoods’ rejected as the child’s voice and pathologised (Kallio, 2011; p.85). Therefore, voice should be considered as a category, subject or discourse, maintained by boundaries of identity or space in how ‘subjects are positioned through power relations and the social or academic classifications they sustain’ (Arnott and Reay, 2007; p.316).

This then returns us to how prevailing constructions of childhood mediate how the voices of children are understood (Alldred, 1998). Researchers (or practitioners) risk relying on their own semantic categories to understand what children are communicating as opposed to developing an understanding of children’s own semantics, therefore, how children’s views are recorded may be indicative of what the researcher understands and not what children mean (Spyrou, 2011).

Consequently, issues surround actualising children’s voices and enabling them to freely express themselves (Spyrou, 2011) to participate and influence decisions about their lives (Copock and Phillips, 2016), is to be explored throughout this thesis in the context and in relation to accounts by EPs. These tensions across children’s rights, for example, the uncritical use of voice constructing practices where voice is an uncontested good, run into problems when rhetoric needs to be put into practice (Lundy, 2007) with the ‘vagueness of the concept’ (p.66) producing circumstances preventing decision makers being able to evaluate children’s views (Daly, 2018).

Why Educational Psychology?

The review of literature so far has provided an overview of some key debates across children’s rights. However, this thesis aims to explore how children’s rights and associated discourses are situated within the field of educational psychology.

EPs can be positioned as UNCRC duty bearers with obligations to uphold the UNCRC due to their role working to support children and young people. The state is the primary duty-bearer, with those employed by the state having obligations to fulfil their duties under the UNCRC (Blanchet-Cohen and Bedeaux, 2014; Save the Children, 2007). As I will come to explore in greater detail, EPs are both state and non-state actors, yet due to their ethical and practice duties would be considered duty bearers in both contexts. Educational psychology offers a case example of how children’s rights can be understood and enacted in a practice context, with the
organisational context of educational psychology offering insight to tensions which exist in enacting the UNCRC in practice.

This part of the literature review will explore the organisational context of educational psychology and how its current positioning underpins how EPs account for their understanding and enactment of the UNCRC.

**A Brief History of Educational Psychology**

The EP role features in the earlier historical development of SEND policy and legislation, evolving to contemporary practice in the assessment and support of children and young people with SEND.

The development of the EP’s role stems from shifts in legislation in the late 1800s which began to set out compulsory education for children in the UK (UK Parliament, 2021). Local Education Authorities (LEAs) became responsible for the educational needs of their local area (Education Act, 1902). Teachers were responsible to assess if children were perceived to be ‘uneducable’ and could therefore stay home (Squires and Farrell, 2007) with the education system grounded in understanding child deficit (Hodkinson, 2019).

In response to teachers’ perceived challenges in evaluating children’s educational needs, a London LA in 1913 became the first to employ an EP, Cyril Burt (BPS, 2017; Gersch et al., 2017), to assess children’s suitability for school (Squires and Farrell, 2007). Using psychometric testing, categorisation and the development of Child Guidance Clinics (Gersch et al., 2017) and his promotion of ideas of innate inherited intelligence (Burt, 1959; Hill, 2017), Burt is to have proposed that 15% of children had an intellectual deficit making them unsuitable for mainstream school (Hodkinson, 2019). Burt, though a significant figure in educational psychology history, is denounced by many following the fraudulent use of test results (Billington et al., 2016) and his eugenicist position and influence by Galton, the founding member of the Eugenics Society in 1908 (Williams, 2013). Thus deploying a scientific discourse resulting in a culture of measurement of children and young people (Billington et al., 2016). The outlined foundations of the EP role, grounded in assessment and measurement (Farrell, 2010) led to understandings of EPs as being focused on doing things to and for children rather than with them (Burden, 1996).

Government policy, though revised through the 1944 Education Act to afford a duty on LEAs to provide education to the ‘maladjusted’, ‘subnormal’ and ‘physically handicapped’ (Education England, 2021), still operated within deficit driven discourses aimed to categorise some children as lacking. This demand is argued by Squires and Farrell (2007) to have justified an increase of EPs to undertake assessment of educational need.
Educational psychology is viewed by some to be entrenched in a medical model approach concerned more with applying diagnostic criteria where the child is the focus of the problem (Aubrey, 1992; Farrell, 2010), leading to the testing of children being the expected response to children’s difficulties (Gillham, 1978). The Summerfield Report (DfES, 1968) highlighted the contribution of EPs (Gersch et al., 2017), envisioned as transforming educational psychology (Tizard, 1978). However, the decade following the Summerfield Report saw a continuation of an EP role seen to be grounded in the propensity for psychometrics to identify and diagnose the ‘subnormal’ and ‘maladjusted’ (Dessent, 1978; p.32).

The growing dissatisfaction with the EP role saw many reject the behaviourist, deficit and within child approach (Gillham, 1978) with the 1980s seeing EPs make attempts to both support individual children to achieve change, but also address issues at an institutional level (Aubrey, 1992). These changes took place in the context of Mary Warnock’s influential Report into Special Educational Needs (Warnock, 1978), credited with refuting classifications of educational deficit such as ‘ineducable’ or ‘educationally subnormal’ in favour of the term ‘special educational needs’ (Norwich, 2019). Critically, Warnock’s report influenced what was seen as a significant restructuring of the education system and the integration of children with SEND into mainstream school (Lindsay et al., 2020; Squires and Farrell, 2007), a discourse which still operates in some form in today’s contemporary SEND policy.

These changes brought the introduction of ‘statementing’, a new statutory assessment process considered to progress from the categorisation of children towards identifying the necessary support and provision required to meet a child’s needs (Love, 2009), through the formalised allocation of additional learning support (Woods, 1994; Faupel and Norgate, 1993). The Education Act 1981 defined a function for EPs (Gersch et al., 2017) in the Statement assessment process (Squires and Farrell, 2007), affording EPs a role in compiling reports summarising the child’s educational, medical and psychological needs in setting out recommendations and actions (Love, 2009).

The SEND context continued to grow and develop, argued to have a stronger emphasis on understanding children’s educational needs through focus on context and social interaction (Aubrey, 1992). However, this was nonetheless in the face of the continued role of EPs in assessment to determine the allocation of resource (Faupel and Norgate, 1993), distorting their role in the eyes of schools (Fallon et al., 2010), construing EPs as a ‘gatekeeper’ to resources (Dennis, 2004; Miller and Frederickson, 2006; Stringer et al., 1997). EPs were seen to be both a ‘popular’ or perceived barrier described as:
The single greatest disaster for educational psychologist services, as a result of the procedures of the 1981 Act, was to be seen as 'providers' of additional resources to schools via Formal Assessments. Short term status enhancement and perceived power has led to educational psychologists becoming street level bureaucrats at the expense of being applied psychologists. (Faupel and Norgate, 1993; p.132)

The challenge to the role of EPs remained. Gregory (1993) suggested that EPs were not adapting quickly enough to the changing needs of institutions leading to increased consumer dissatisfaction. EPs expressed frustration with many said to ‘feel trapped on a statutory treadmill’ (Lyons, 1999; p.158), being resource led in confirming children’s deficits and unable to apply psychology in way that impacted on individuals and schools (ibid). For instance, the Education Act 1993 and the Code of Practice on the Identification and Assessment of Special Educational Needs (Department for Employment and Education, 1994) set out procedures and timescales for schools to follow and increased parental rights regarding school choice (Norwich, 1995). It was maintained that children should be educated in mainstream school wherever possible (Ofsted, 2004). However, it was said to present a moral dilemma for EPs (familiar dilemma in contemporary SEND provision), who were faced with parents wanting children to remain in mainstream school, with mainstream schools wanting children with SEN in special schools, as they were thought to negatively impact on school examination league tables (Gregory, 1993).

In this way EPs were operating across tensions between hopes of educational inclusivity as set out by Warnock (1978) and the advancing neoliberal performativity of schools. Subsequent legislative changes through the Special Educational Needs Code of Practice 2001 (Department for Education and Skills, 2001) outlined a ‘stronger right’ (p. iv) for children with SEN to receive education in mainstream school, the provision of information and advice, mechanisms to resolve disputes and the right for parents to be told when their children were receiving special educational provision. However, critically, how inclusion was conceptualised and the propensity to educate children in mainstream school was challenged when Warnock (2005) adjusted her perspective and acknowledged that in trying to treat children the same, failure to consider children’s differences in learning undermined efforts to address children’s needs. The change represented a shift in focus from the inclusion of all children in the same school to the inclusion of ‘all children in the common educational enterprise of learning, wherever they can learn best’ (Warnock, 2005; p.14).

Inclusivity had begun to be viewed as potentially exclusionary with monitoring and evaluation of inclusion variable or unsystematic (Frederickson et al., 2007; Lindsay, 2007), nevertheless, offering what some EPs argued as an opportunity to redefine their role and contribution (Cameron, 2006). For instance, critiques of
educational psychology concern how practice can be grounded in the medical model, favouring deficit approaches (Gillham, 1978) where problems are located ‘within the child’ (Farrell, 2010). The EP role began to be defined through one of inclusion, identified by the Department for Education and Skills (2002) as a key resource who understands the school context, able to support individual children, but also address issues in the classroom or at a whole school level in promoting inclusivity. Thus, EPs needed to retain their focus on the interacting nature of individual need and context (Mackay, 2005). EPs service delivery could be defined as three levels: the individual through assessment and intervention with a child; the organisation, such as training in schools; and the system, where there is a role for EPs to develop innovative education provision (Curran et al., 2003). EPs aimed to address systemic issues by providing ‘meaningful and purposeful’ advice regarding children’s needs with clear identification of action and resources, setting out tasks outside of statutory assessment obligations, focused on context (Cameron and Monsen, 2005; p.286). Hobbs et al. (2000) proffer that the multiple discourses which EPs operate within construct a complex professional environment. Educational psychology practice is addressing these concerns to move from ‘within child’ problems to developing inclusive institutions that address issues systemically (Dennis, 2004).

*Contemporary Educational Psychology Practice*

Nevertheless, alongside EPs battle with their professional identity, perhaps unsurprisingly, questions continued to be posed across the wider SEND context around the suitability of support for children and young people with SEND. The system was perceived to be unequal with certain ‘categories’ of SEND (indication of the ongoing labelling of children and young people), such as children with specific learning difficulties and Autism receiving greater levels of support and resource compared to those diagnosed with moderate learning difficulties or with behavioural, social and emotional difficulties (Mittler, 2008). Parents of children with SEN raised, through a Select Committee Report, concerns including; difficulties with the process and outcomes of ‘Statements’, children not receiving identified provision, higher rates of school exclusion amongst children with SEN, lack of information about children’s progress, lack of collaboration between parents and teachers, limited provision for black and ethnic minority families and issues with transition from school (House of Commons Education and Skills Committee, 2006). Definitions of inclusion were unclear and poorly implemented, with a lack of parental confidence and teachers not being prepared adequately (Norwich, 2014). A Select Committee described SEN policy as ‘not fit for purpose’ and called for a major review of the whole framework of provision, including ‘statementing’ and resource allocation (House of Commons Education and Skills Committee, 2006). The Lamb Inquiry (Lamb, 2009) was initiated into parental confidence in SEN, highlighting parental dissatisfaction regarding information available and the quality of communication.
Response to the issues within the SEN system came through a government Green Paper - ‘Support and Aspiration – A new approach to special educational needs and disability’ (DfE, 2011), which proposed a greater emphasis on early identification and assessment and providing parents greater control (Bernardes et al., 2015). This took the form of the now, not so new, third Special Educational Needs and Disability Code of Practice 2015 (hereafter the CoP), statutory guidance on the duties, policies and processes for the support of children and young people with SEND (DfE and DfH, 2015). This reform, against the backdrop of significant dissatisfaction with the previous system, outlined a series ‘radical’ changes (Lehane, 2016; Norwich, 2014). However, it was argued that the proposals, which included new ways of identifying SEN, a single assessment process, a 'local offer'\(^6\), providing parents with choice of schools and greater independence in assessment of children’s needs, did not address issues of defining inclusion, although it did suggest a greater user-led approach (Norwich, 2014).

**Contemporary Educational Psychology Practice - Situating the Code of Practice**

The CoP is relevant to a raft of institutions, services and practitioners, including; educational provision through early years, compulsory education and college, special educational needs co-ordinators (SENCOs), social care, youth offending services, and the NHS (DfE and DfH, 2015), also guiding a substantial aspect of EP activity. As previously noted, their statutory role, formalised in the 1981 Education Act (Faupel and Norgate, 1993; Leadbetter and Arnold, 2013) continues the requirement on LAs for the provision of psychological advice for children and young people having a statutory Education, Health and Care Plan assessment (previously ‘Statements’) (BPS, 2015). The CoP, which will be explored in more detail in Chapter 4, sets out a series of expectations for educational professionals, including EPs, for example, commitments to the UNCRC, children, family and young person involvement, person-centred planning (PCP) and partaking in cycles of assess, plan, do and review\(^7\) (see Greenwood and Kelly, 2017). Alongside, EPs provide interventions outside of the statutory process with individuals, schools or organisations aimed at support and preventative services for children with SEN (Farrell, 2009). This can include, but is not restricted direct work with children and young people and consultations with education providers with the aim of developing understanding and strengthening responses in the support of children and young people with SEND.

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6 The Local Offer is the responsibility of the LA. It provides children and young people with SEND, and their families, information about the support available in their local areas.

7 A graduated response set out in the SEND Code of Practice 2015 involving four stages of action – Assess, Plan, Do, Review (APDR) to review, revisit and revise earlier decisions and actions agreed for children and young people with SEND.
The Contemporary Educational Psychology Professional Context

EPs’ professional role subsequently, through its obligations under the Code of Practice, continue to be bound to the Local Authority (LA). However, recent years have seen a change in EPs’ relationship with the LA, most significantly as a result in the operation and governance of educational psychology services through the shift to traded services. Educational psychology’s main functions, while remaining the same, are faced with an evolving operationalisation of key professional activities in line with the changing social and political context of public service provision (Fallon et al., 2010). Educational psychology previously received core funding from LAs to provide statutory and pre-statutory or preventative work (Schulze et al., 2018). In moving to a traded model, for an educational psychology service to operate, they must generate income from non-statutory work from ‘customers’ (mainly schools), with educational psychology services ‘trading’ as a limited company, social enterprise or sole trader (DfE, 2019). Educational psychology services will often be partly traded and continue to be based in a LA and continue to conduct statutory assessments on their behalf, but trade with schools and other education providers. A fully traded service, typically a distinct organisational entity, may also be bought in by the LA to complete statutory assessments but will not be employees of the LA. These organisations maybe be limited companies, but also non-profit or third sector organisations or social enterprises. Furthermore, EPs also have the option to operate privately where they can be employed directly by families to assess their children, though EPs typically remain part of a complex system of national, local and professional governance through interacting policy and traded relationships, which is indicative of the EPs interviewed for this research who regardless of their institutional affiliations were contributing to the assessment of children and young people for statutory processes.

Educational Psychology – Marketised and Corporatised

As may already be evident, contemporary educational psychology services should be considered within the context of increasing marketisation and corporatisation of public services, with the working and institutional context of EPs predominantly shifting to being within traded services (Lee and Woods, 2017). Under the rise of neoliberal modes of governance, public services have become increasingly marketised leading to the corporatisation of LAs, which have traditionally been were EPs were located.

This sort of organisational transformation is indicative of the rise of neoliberalism (Connell et al., 2009). Foucault questioned neoliberalism as a ‘way of establishing strictly market relations in society’ seeing
neoliberal ideas as another mechanism of administrative intervention by the state, representing a specific rationality or art of government (Foucault, 2003).

Neoliberalism is a complex and multidimensional phenomenon of economic, political and ideological discourse (Jessop, 2002). It rests on the central tenets of: the economically self-interested individual pursuing his/her own interests and needs; free market economics as the mechanism to distribute resources and opportunities; laissez-faire approaches establishing a self-regulating order within the free market with state power restricted to individual rights; and a commitment to free trade (Lorenzini, 2018; Olssen and Peters, 2005).

In the context of public sector governance, the embedding of neoliberalism was seen as ‘rollback neoliberalism’. This saw the purposeful eradication and discrediting of welfarist and social-collectivist institutions to a system of ‘roll-out neoliberalism’ that sanctions the creation and amalgamation of neoliberal state systems, forms of governance and regulation (Peck and Tickell, 2002). Neoliberalism generally refers to the undertaking of economic and social transformation to establish the free market (Connell et al., 2009). Thus, deploying such forms of governance sees the infiltration of systems that connect with a marketised and globalised economy, with privatised state managed sectors and services which utilise market-orientated management in an effort to reduce the public sector (Jessop, 2002). Hence, public services are ever more formed under market terms (Pratt, 2016). Since markets are driven by a need to increase profit, neoliberal policies seep into new territories and target services previously delivered by public agencies (Connell et al., 2009), for example, through educational psychology trading services. The neoliberal market promotes the liberalisation and deregulation of economic transactions with the privatisation of state-owned projects and state-provided services and the advent of the market in the public sector (Jessop, 2002). Thus, public agencies founded on the rights of citizens and relationships with family and community (Connell et al., 2009) become challenged and in competition with neoliberal forces and modes of governance, thus the current conditions of EPs’ practice is indicative of wider political shifts in welfare provision.

**Marketisation and the Corporatisation of Local Authorities**

How EPs currently operate and their capacity to enact the UNCRC and work within children’s rights frameworks is underpinned by increased professional management of the public sector, clear standards of performance and management of output, disaggregation of the public sector, increased competition, private sector management practice and closer monitoring of resources (Hood, 1991). Between 2010-2015 the UK Coalition government pursued the dismantling of the welfare state and remained committed to reducing public expenditure (Jones, 2015). The aim was to increase private sector-led economic growth and decrease
the size of the welfare state giving more power to local government and communities (HM Government, 2010). While some services remain under government control, namely core services such as social care and some aspects of education, the UK Government continues to marketise to increase competition and privatise services (Krachler and Greer, 2015). The development of competition in the delivery of welfare services is happening alongside the establishment of internal markets in public service institutions (Rogowski, 2011).

Although LAs have always been afforded the legal power to utilise alternative forms of service delivery, until the mid-1980s LAs usually kept services ‘in house’ (Sandford, 2019). However, with the Local Government Act 1988 outlined a legal requirement for compulsory competitive tendering (Jones, 2015; Sanderson, 2019) and the subsequent process of ‘Best Value’ within the Local Government Act 1999, the increased use of alternative service provision was sanctioned (Sandford, 2019).

The neoliberal discourse ramps up in the White Paper Open Public Services. Introduced by the Coalition government, it outlined its ambitions for alternative models of public service delivery (HM Government, 2011), touting an approach that that will:

signal a decisive end to the old-fashioned, top-down, take-what-you-are-given model of public services. We are opening public services because we believe that giving people more control over the public services they receive, and opening up the delivery of those services to new providers, will lead to better public services for all. Whatever the circumstances, this Government would be modernising public services in this way. But in this economic climate, when times are tight and budgets are being cut to stabilise the economy and reduce our debts, opening public services is more important than ever – if we want to deliver better services for less money, improve public service productivity and stimulate innovation to drive the wider growth of the UK economy. (HM Government, 2011; p.6)

The White Paper8 deploys neoliberal language firming up dominant discursive regimes that enable the neoliberal project, producing the neoliberal effect of control of the public in having the freedom and choice over their services. Thus, the market over government and partnership modes of governance become the driving force in service delivery (Jessop, 2002). This bolsters views of slow-changing LAs unconcerned with performance or effective allocation of resource and public money (Jones, 2015), where the public are expected to ‘take-what-you-are-given’ (HM Government, 2011; p.6) reflecting the belief that state intervention infringes previously free choices citizens (Jessop, 2002). Central government policy confirms the view that ‘public service delivery is broken’ (HM Government, 2011; p.7) and bolsters a view of the state that fails to deliver (Jessop, 2002). The White Paper therefore constructs a discursive regime aimed to scaremonger

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8 White papers outline Government proposals for future legislation.
and provide no other viable alternative within the constraints of austerity in accepting the services pushed upon us clearing the path for increased privatisation of public services. The discourse of failing public services was followed by reduced government funding between 2010-2015 requiring LAs to pursue alternative forms of service delivery in an effort to decrease overheads and generate income (Sandford, 2019).

This alternative form of service delivery saw the ‘corporatisation’ of LAs where its services shifted from within LA control to being a wholly or partly owned corporate entity, or traded service, as can be seen in the provision of educational psychology services. Profit-making companies were created by LAs representing a considerable change in the governance, as well as (claims about the) performance and efficiency of public service delivery of benefit to LAs due to generating income (Ferry et al., 2018). The Local Government Act 2003 and Localism Act 2011 stipulates that LAs are required to establish a company if the aim is to undertake traded services for profit, though these must be reinvested in other council services (Sandford, 2019).

The utilisation of traded services are promoted as ‘innovative’ in developing ‘enterprising’ councils in the face of increased budget pressures (Local Government Association, 2017; p.4). However, services emerging from wider changes within public sector governance, typically meant to represent the building of a strong and vigorous public realm, has resulted in public services looking significantly less robust (Clark, 2004). This is epitomised by how the corporatisation of LAs transforms historically monolithic organisations into multiple-entity public institutions (Torsteinsen, 2019). Thus, local governance cannot be reduced to a particular institution of local authority but operates through a dispersed system of public, private and voluntary actors and partnerships and networks in establishing local governance, service-delivery and policy-making (Lowndes and Wilson, 2003).

However, Ferry et al., (2018) argue that there has been insufficient attention to the medium and longer-term consequences for LA governance, management, performance and democracy, particularly in relation to the power of citizens to effect their civic and democratic rights. It is suggested that the disaggregation, automatisation and contractualisation of local government creates more complex structures with decreased transparency and tenuous accountability, which contest democratic principles (Torsteinsen, 2019). Yet the academic debate regarding the corporatisation of LA services and its impact on policy is limited (Voorn et al., 2017). Thus, practice is situated within a neoliberal form of governance that consequently leads to ‘disaggregating state power’ (Wilkins, 2018; p.5). This leads to the question of how, within an increasingly marketised context, EPs can meet the policy requirements of upholding children’s rights and ensuring the inclusion of children’s views with competing aims and tensions of corporatisation of support.
Commitments to Children’s Rights

The specific commitment and EPs’ accounts of understanding and enactment of the UNCRC will be explored in greater detail as this thesis progresses. However, EPs, as part of the children and young people’s workforce are obligated to uphold the UNCRC. EPs are duty bearers, those who have responsibility to uphold the UNCRC (Blanchet-Cohen and Bedeaux, 2014).

The ways in which EPs account for how they understand and enact the UNCRC and broader notions of children’s rights is the subject of this doctoral thesis. Notwithstanding research exploring children’s participation, educational psychology academic literature in relation to the UNCRC specifically has largely been concerned with establishing implicit connections between educational psychology principles and children’s rights and outlining the potential implications of the UNCRC for educational psychology practice (see Hart and Hart, 2014; Lansdown et al., 2014). A recent academic textbook *International Handbook on Child Rights and School Psychology* (Nastasi et al., 2020) provides insights into the spaces and opportunities for educational psychology and children’s rights, but does not include empirical or evaluative study of children’s rights enactment. Offering a more comprehensive review of representations of the UNCRC were Woods and Bond (2014) who highlighted the lack of explicit commitment to the UNCRC across governing documents, though identified a series of implicit commitments to the UNCRC, for example through British Psychology Society guidance documents. Equally, in addressing the US context Nastasi & Naser (2014) provided an account of how children’s rights were represented in professional standards of practice and ethics in school psychology.

Despite limited research addressing the relevance of the UNCRC to educational psychology, academic research indicates knowledge of the UNCRC’s legislative and quasi-legislative status (Hobbs et al., 2000). EPs have acknowledged the historical and more recent legislative changes as mediating their duties to the UNCRC, for example the relevance of the Children Act 1989 and the Children and Families Act 2014 in particular (Hartas and Lindsay, 2011; Hobbs et al., 2000; Kay, 2019; Roller, 1998). Equally, a review of the academic literature identified research in educational psychology, particularly those focused on establishing the views of children and young people, acknowledged EPs’ obligations under the UNCRC (see Baxter and Frederickson, 2005; Kay, 2019).
Research illustrated EPs’ engagement with the quasi-legislative agenda of children’s rights (Hobbs et al., 2000), particularly evident through discourses which worked to construct a commitment to aspects of the UNCRC and rights through the mobilisation discursive practices that extend beyond rights specific language, such as children’s views and participation. I amplify, in Chapter 6, how this can be illustrative of exclusionary practices, where the wider discourse of rights is overtaken by one of views. In this way, the UNCRC is positioned as a potentially transformative tool due to its foundations in a rights agenda where children and young people are seen as a minority group who require special attention to their rights and interests under the UNCRC (1989) where EPs mobilise rights as an empowering mechanism (Giles and Rowley, 2019). Therefore, from a children’s rights perspective this poses the question – ‘how do educational psychologists reconcile the ambiguities that impinge upon their professional practice?’ (Hobbs et al., 2000; p.108), as outlined across this chapter to utilise children’s rights as a transformative tool.

Commitments to Children’s Views

Children’s views and participatory practice are inherently linked to the UNCRC. However, the focus on children’s views has an established history with listening to children an established component of educational psychology practice, with EPs positioning themselves as advocates or listening to children and young people since the 1960s, resulting in the development of a more significant focus in published work from around the 1980s (Gersch et al., 2017). For example, (Gersch and Cutting, 1985) discussed the significance of children’s views in educational psychology before the advent of the UNCRC in his work The Child’s Report some years before the advent of the UNCRC (1989). However, Roller (1998) identified that while the contribution of children’s views to EP practice was recognised, the lack of a comprehensive framework made it difficult for educational psychologists to achieve this aim.

Legislative developments, such as the Children Act 1989 are said to have offered the impetus for EPs to place greater emphasis on children’s views into their practice (Roller, 1998). This, alongside the advent of the UNCRC, arguably would construct the social and institutional conditions, for EPs, together with many other practitioners in the children and young people’s workforce to concentrate their attention on establishing the views of children and young people. Writing about the changing role of the EP in light of the Every Child Matters agenda, (Baxter & Frederickson, 2005) highlighted that educational psychology services primarily contributed to the statutory assessment process. Changing government agendas, epitomised in policies, such as Every Child Matters, alongside a government report on the direction of educational psychology services (DfEE, 2000) provided the impetus for educational psychology to reassess its role, position and practice in assessing and support children’s special educational needs (Baxter and Frederickson, 2005).
Children’s Views in Educational Psychology Practice

How EPs respond to tensions within their role is evident in a range of innovative practices and methodological approaches and clear commitments to establishing children’s views, with literature within educational psychology recognising how this is underpinned by the UNCRC (Aston and Lambert, 2010). Literature has outlined how EPs ‘have claimed a central role in representing and advocating for children’s views’ (Ingram, 2013; p.335). How children’s views are understood appear to be characterised through concern for children’s views, consultation, research with children and young people and person-centred planning. More often than not, as indicated through this literature review, EPs utilise the term ‘consultation’ when referring to engaging with children and young people (Hobbs et al., 2000; Todd et al., 2000; Woolfson et al., 2007), alongside other practices associated to participation, such as the gathering of children’s ‘views’, ‘listening’ to children, ‘having their voices heard’, ‘child voice’, which will be explored as this thesis progresses. Such terms are indicative of a broader practice often underscored by a commitment to the UNCRC, specifically Article 12 and commitments to children and young people to have their views taken into account. However, in the same way problematic understandings of Article 12 are pervasive within the broader children’s rights literature, educational psychology is subject to similar challenges in defining and conceptualising children’s views, voice, consultation and participation. Thus, the multiplicity of terms used is indicative of wider ambiguity regarding children’s views and participation.

The academic literature draws attention to a diversity of approaches utilised by EPs to establish children’s views, with it being recognised the EPs use interviewing with children and young people, case work and communicating views to other professionals as part of their direct work (Gersch et al., 2017), alongside interviews, letters, information about the EP role, support in developing plans, and videos (Hobbs et al., 2000). More recently, with the rise in popularity of person-centred planning (PCP), including frameworks such as Planning Alternative Tomorrows with Hope (PATHS)9, which have been introduced to provide create ways for children and young people to contribute to their planning.

Such approaches are important as ensuring children and young people’s views are incorporated has the potential to shift dominant narratives, having the capacity to influence wider socio-cultural shifts regarding oppressive narratives of children and young people. For example, Gregory and Purcell’s (2014) research on

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9 PATHS is a person-centred action planning goal based tool increasingly used to enable children and young people with SEND to participate in what actions are needed to ensure they can reach their goal.
'school refusal behaviour’, though not specifically a collaborative form of research, demonstrated how research establishing children’s views can elevate the views of in under-researched areas. In a similar way Sheffield and Morgan (2017) interviewed young people with mental health difficulties about their experiences in school. The use of children’s stories has demonstrated how sharing the stories of children, even with small participant samples, can illuminate the diverse subjective experiences of children (Billington, 2018) and enable children and young people to tell strengths based stories about where they see their futures (Tellis-James and Fox, 2016).

The importance of narrative approaches was highlighted by Hobbs et al. (2012) who stated:

However, with a strong commitment to move away from a deficit model to one in which practice could challenge the influences of modern power, narrative approaches enabled us to work in a way that fitted with our beliefs. We moved towards engaging in conversations in which we were able to help others increase their awareness of alternatives to dominant stories about their identity and thereby shift from what is ‘known and familiar’ to ‘what is possible to know’. (p.49)

Other creative approaches utilised to enable children and young people to better express their views include methodologies such as photovoice (Jones, 2013) and theatre (Hammond, 2013) important in extending beyond language based approaches and providing opportunities for children and young people to have their say. The use of approaches not reliant on language have been seen to be pertinent to EP practice with Hill (2016) identifying the limited availability of research eliciting the views of children and young people with multiple needs who may struggle or are unable to communicate and in response evaluated a range of creative methods to facilitate communication other than through verbal expression.

In building on some of these creative undertakings research projects in collaboration with children and young people have demonstrated how EPs can draw on their research skills in creating opportunities for children and young people to participate in decision making. An action research project with children to facilitate the design of a new school playground, both illustrated how children can influence school design, but simultaneously reflected on the adult initiated elements of the project which hampered its progression to ‘full participation’ (Pearson and Howe, 2017). However, this is indicative of the importance of the involvement of children across the process in achieving more developed forms of participation. For example, Burton et al. (2010) involved primary school pupils in the cycles of action, including identifying the research topic, training on and analysis of data, data gathering and presentation of findings. Crucially, the project recognised the ways
in which children’s participation can be informed by pupil-led research through developing a more comprehensive understanding of how pupils engage in research processes. Thus, illustrating the value and intersection of engaging children and young people in collaborative endeavours, with Ackers (2012) in exploring cyberbullying through the ‘eyes of children’ trained children as researchers to gather data, reflecting on how the researcher’s knowledge of their peers enabled them to develop a questionnaire responding to areas seen to be significant and relevant to examine, thus illustrating the interdependent nature of collaborative practices with children and young people.

These forms of engagement with children and young people are all indicative of forms of children’s participation, under the rubric of consultation, views and voice. For example, Todd et al. (2000) provide a comprehensive account of consultative practice with children and young people, though grounded in UNCRC principles and promoting how EPs can ‘be genuinely collaborative with children’ (p.114) arguably eschewing some critiques of consultative practices where it is seen as a lesser form of participation (Hart, 1992; Lansdown, 2011). Similarly, Woolfson et al. (2007) argue how consulting with children is not only a preferred practice, but an obligation of professionals working with children and young people. The article draws attention to useful techniques to establish the views of children and young people, including Gersch and Cutting (1985) research on the Child Report, which suggests how active participation involves provision of the mechanisms to enable the inclusion of children and young people from initial assessment to the evaluation approaches used. Nevertheless, included was also the promotion of research orientated methodologies such as focus groups to consult with children and young people, identifying research eliciting views on interventions and treatment (Charlesworth and Rodwell, 1997; Roose and John, 2003; MacPhail, 2010), largely disregarding the nuances of participatory practice with the examples indicative of children remaining the object of research.

Correspondingly, Gersch and Nolan (1994) explore the views of pupils excluded from school, in the production of a pupil leaflet illustrating how EPs can use the views of children and young people at a whole school level. In a similar way, Nuttall and Woods (2013) undertook research involving a range of stakeholders to provide detailed insight into specific cases of children refusing to attend school to create a ‘triangulated, contextualised and dynamic view’ of the perspectives of children, families, practitioners and school staff (ibid; p.350), demonstrating the importance of collaborative approaches to intervention evaluation, thus illustrating a collaborative practice which can facilitate the interplay of different stories.
Central to the sharing of children and young people’s views is the ways in which EPs communicate and record. Woolfson et al. (2007) in research about how children and young people would like to be consulted that they often felt subject to tokenistic practices. The young people identified how they would like to be fully informed to be able to participate in discussions, be able to choose who should be involved in meetings and communicate the ways in which they would like to be involved in ensuring there were clear outcomes. Aston and Lambert (2010) explore some of the barriers to participation with young people suggesting that there needs to be greater attention to the wider context and consideration of cultural factors, attitude and the systems within educational settings to enable greater involvement.

What can be seen are clear commitments to children’s views, with the academic literature illustrating the centrality of this to EPs’ practice. Nevertheless, practices explored across the literature appear to remain confined to discourses of views, with discussion typically centred on mechanisms to strengthening practices in order to achieve this. While, it can be found discussions of such practices are underpinned by the UNCRC (Aston and Lambert, 2010; Harding and Atkinson, 2009), literature does not extend to how EPs understand their role and responsibilities with regard to the UNCRC and in the context of key debates within children’s rights literature. Thus, this thesis aims to interrogate how EPs account for their understanding and enactment of the UNCRC in attempting to establish a stronger conceptual base for rights-informed practice in educational psychology.
Chapter 3 – Methodology

This chapter will take you through the journey of the conceptualisation of this thesis, drawing on my own research positioning and epistemological orientation, alongside a consideration of concerns regarding current approaches to children’s rights research. This methodology will set out the theoretical underpinnings and the methods and approaches used to engage with accounts from educational psychologists (EPs) and the analytical tools applied in reaching claims regarding how EPs account for their understanding and enactment of the UNCRC.

Theoretical Framework

Beginning to explore the theoretical foundations of this thesis presented questions concerning identifying the point of project conception. This could be where the PhD is authorised to be a PhD, but would likely begin with what brought you into the research journey. For me the research began when I first began to work within the field of children’s rights and participation, being introduced to participatory practice and advocacy underpinned by the UNCRC. These experiences exposed me to particular forms of knowledge regarding children’s rights, which subsequently influenced and shaped the development of my research positioning and epistemological and ontological orientations.

Epistemology

Epistemology is concerned with the theory of knowledge (Willig, 2008) with its etymological roots from the Greek from episteme (knowledge) and logos (explanation) (Stone, 2012). Epistemology addresses the questions; ‘how, and what, can we know?’ to consider the nature of knowledge, its scope and what claims to knowledge (Willig, 2008; p.2) or how we know what we know (Crotty, 1998). Therefore, epistemology looks at the nature of knowledge, for example the sources and limits of knowledge, its rationality and justification (Stone, 2012).

Largely, our epistemological stance is determined through how we come to understand the subject and the object and how meaning is constructed through the relationship and interaction between these (Crotty, 1998). An objectivist epistemology operates under the belief that there is a meaningful reality, which exists irrespective of any form of consciousness (Crotty, 1998), with a linear relationship between the world and one’s understanding of it (Willig, 2008). As such, objects are there to be discovered and understood by humans (Crotty, 1998). Moving away from positivist perspectives, qualitative research typically sits within
epistemological orientations, such as social constructionism, which value diversity of meaning, mediated through history, culture and language and engagement with social worlds (Willig, 2013). Social constructionism rejects that there is an objective truth with meaning being constructed through engagement with the social world or a subjectivist approach, where meaning is imposed on the object by the subject rather than arising from the interaction between the subject and object (Crotty, 1998).

I have been asking myself these epistemological questions throughout my research, for example, in terms of sourcing literature, developing a research design and the analysis of data. Epistemology is presented as forming the foundation of research activity. Nevertheless, Crotty (1998) acknowledges that for many epistemology is not the starting point of research, but a desire to explore real life issues and identify questions that need to be answered. In being able to pinpoint epistemological starting points suggests research progresses in a linear and organised fashion, not accounting what can be a ‘messy method’ (Mellor, 2001) and complex and fraught (Atkinson, 1994), arguably not reflecting the more iterative process that occurs in carrying out research. Thus, how I reached my epistemological and ontological positioning emerged from the interaction of my practice, professional and research engagement and developed and progressed together with the research, reflecting a form of epistemological disobedience meaning to challenge the idea of a zero point of epistemology where there is a beginning point free of the influence of social experience (Mignolo, 2010), rejecting what could be called a pseudo-positivist stance of knowing how you are going to know rather than seeing epistemology as fluid and responsive.

**Practitioner-Researcher Professional Identity - Reflexivity**

Reflexivity is defined by Fook (1999) as being able to situate yourself in the context, to understand how you and your actions influence the ways of seeing and understanding. Ferguson states that reflexivity ‘refers generally to the ability to act in the world and to critically reflect on our actions’ (Ferguson, 2003; p.199).

Reflexivity is undertaken throughout the research process (Hertz, 1997), in the identification of the research problem to the shifting positionality of the researcher and participants, data interpretation and writing (Hesse-Biber, 2012). Central to qualitative research, reflexivity addresses forms of knowledge construction, and the co-production of knowledge with participants, thus reflexivity is an ongoing process in need of scrutiny, reflection and interrogation of data (Guillemin and Gillam, 2004). Reflexivity is ‘self-critical action’ wherein researchers reflect on how the world is known and mediated through one’s lived experiences and history, using reflexivity to consider how theoretical positioning, history and experience constitute and influence the research focus and the research approach, alongside the structural, political and cultural context the research and participants are located within (Hesse-Biber, 2012).
I outlined my own researcher positioning earlier in the introduction, elucidating how my employment experience in children’s rights led me to pursue this doctoral research. The research aim, to undertake a Foucauldian Discourse Analysis of EPs’ accounts of their understanding and enactment of the UNCRC was underpinned by my own wider concerns regarding limits to the extent of practitioner knowledge of the UNCRC in the way Harding (1991) argues how ones social and political position influences research interests and questions. Crucially, my reflexivity was in relation, not only what children’s rights means and how it is accounted for in practice, but my positionality which considered how children’s rights, and specifically the UNCRC, was not understood or enacted across LA contexts. My own reflexivity, thus underpinned my aim to take up research with emancipatory objectives (D’Cruz et al., 2007), in attending to how certain voices are silenced, limited by dominant discourses which allow and restrict what narratives can be known (Butler et al., 2007). In this way, FDA in focusing on language use, common perspectives and practices, alongside discontinuities and ruptures and how subjects are positioned within these (Foucault, 1972), brings in its own reflexivity through identifying the location and practices in constituting what is ‘unsaid’ (Foucault, 1972; p.119).

Throughout, attending to silent voices and identifying discontinuities and ruptures required drawing on my own knowledge from practice, reflexively exploring the subject positions of EPs. While I was evidently not an EP, my own practice exposed me to practice issues commonly faced by EPs. Notably, I continued to work with young people who would go missing from home with special educational needs and school exclusions, some of which had EHCPs and educational psychology involvement. This enabled me to reflect on educational psychology practice through an alternative lens, not to criticise the educational psychology approach but to situate challenges facing EPs within the wider context of children’s services. In particular, I was able to reflect on the silencing of certain children and young people’s voices in educational contexts, alongside my own frustrations where I encountered children and young people frequently excluded from their educational planning.

However, reflexivity draws on the subjectivity of other professions and practitioners and as discussed by Hesse-Biber (2012), means reflecting on how a world is mediated through experience, drawing on theoretical positioning and historical context in understanding how research is shaped. Crucially, throughout this research I was based in children’s services in a LA in a multiagency context, but also largely with children’s social workers where I took the opportunity to use supervision to consider how children’s rights can be infringed upon through the systems and processes operating around children and young people. This enabled me to draw on parallels between the EP context and social work practice in making extensive use of the social work academic literature throughout this thesis to complement the educational psychology research field.
This reflexivity extended beyond my practice context, but simultaneously drew on academic network within my university. Being located in an education department allowed interdisciplinary access and critical reflection. For instance, being asked to contribute to conferences for teacher training programmes illustrated, where there was a recognition that the UNCRC did not significantly feature, that there was scope for the development of knowledge of the UNCRC. This somewhat confirmed my earlier assertions around limited practitioner knowledge of the UNCRC. Equally, I used research groups to explore how others comprehended the subject positions within my research findings, particularly in relation to critiques of more deficit driven and psychologised understandings of children found within developmental psychology and the psyprofessions.

**Insider-outsider**

As a researcher outside of the profession of educational psychology, I would position myself as an outside researcher, therefore, not having some of the potential advantages of insider researchers where you have developed an existing awareness of the lives on the participants (Hammersley & Atkinson, 2019). Insider researchers can be viewed as having shared and legitimised insight (Gair, 2012), however, Hammersley and Atkinson (2019) argue that being an insider researcher can pose a risk of identification with one group or individual and may stymie the flexibility in the field, strain relationships with others or identify with participant perspectives in a way that prevents interrogation and critique.

However, in being an outsider researcher, in a similar way to advocacy, you may need to pose challenging and uncomfortable questions. The relationship was one of the researcher and the researched, where the researcher is in a privileged position giving rise to ethical issues pertaining to the imbalance of power (Råheim et al., 2016) where research subjects become objects to be researched, not dissimilar to an advocate entering a space to shine a spotlight on certain practices and question decisions. Equally, as Thomson and Gunter (2011) suggest in being an outsider you are likely to gain access either as a consultant or critical friend creating highly fluid relationships that are messy and obscured with insider-outsider boundaries representing power struggles with significant political components. Such an interplay of power highlights the problem of the insider-outsider dichotomy with research boundaries operating as fixed to fluid and invisible, often being troublesome to navigate (McNess et al., 2015).

My researcher role was one of an outsider being invited into the educational psychology field by EPs who had formulated and conceptualised the research proposal and aim. As a researcher with experience of working with LAs there was a shared body of knowledge regarding certain institutional discourses and practice. Thus, I was navigating entering the research space as an outsider through drawing on commonalities, shared values
and commitments to rights informed practice. Equally, the research was to work towards a common goal of promoting and upholding the rights of children and young people, with both the researcher and the researched having commitments to uphold the UNCRC within their professional roles and remit.

‘Studying up’

At the same time as the researcher, and EPs as the researched, there were different professional remits and responsibilities. I was not an EP, but an external doctoral candidate with a diverse practice background largely around children’s rights and participation, invited to research children’s rights within the practice field of educational psychology. The research space was occupied typically by EPs holding professional doctorates, thus, I underwent a period of what Laura Nader (1972) describes a ‘studying up’. In contrast to how researchers often attend to operations of power in ‘studying down’ to oppressed and marginalised groups, ‘studying up’ is where the researcher may experience entering a research field with less control or power, for example in studying major institutions, government or similar (Nader, 1972). I was the outsider doctoral researcher entering an unfamiliar space of EP participants who were insider experts undertaking professional roles and duties, with their own institutional language and discourse. Taken a different way, it could be argued that EPs needed to undertake a process of ‘studying up’ the to address ‘gaps’ evident across children’s rights work (Pupavac 2001; p.5) regarding children’s rights knowledge was to be addressed within the field of educational psychology.

The ‘stranger’

In this respect I was firmly positioned as the outsider bringing in different knowledge and operating in a different practice field reflecting George Simmel (2008) idea of the researcher ‘stranger’, who is not someone who comes one day and leaves the next, but one who stays, standing out within their place of activity. The stranger is not the owner of the space, but speaks into the group where positions are already occupied. In being this stranger you are able to take up a position of closeness and distance, possibly able to see patterns and relationships not visible from the inside (Simmel, 2008).

In being this stranger, asking critical and ‘problematising’ questions, the experience oscillated from a welcoming ethos and engagement in a shared interrogation of questions of children’s rights, to derision and a restriction of the scope of the research. This took the form of the eroding of the validity of certain perspectives through querying the researcher’s understanding of the EP role and insight into practice. Thus, being an outsider researcher you can also be viewed with distrust and subject to ‘insiderism’ (Collins 1986; McNess et al., 2016; Merton 1972). The group has a monopoly of knowledge of oneself, thus you have to be
part of the group to understand the group, which allows for the ‘othering’ of certain groups perpetuated processes akin to white male insiderism taking ‘the form of patterned expectations about the appropriate selection of specialities and of problems for investigation’ (Merton, 1972; p.13). This takes on a form of ‘othering’ wherein the problem or the ‘object’ or ‘subject’ of study is a ‘constitutive otherness’ (Said, 1978/2003; p.97). Those viewed as outsiders and different become othered, westerners positioned themselves as superior to the cultural ‘other’ (Said, 2003), women as the ‘other’ sex within a patriarchal society where men are superior (de Beauvoir, 1997) and the ‘child’ can also be positioned as ‘other’ to the adult (Cannella and Viruru, 2003). The child being a metaphor in ethnographic research (Råheim et al., 2016) where being childlike has been deployed to describe, depreciate and subjugate people, such as racialized or colonised others, psychatrized and disabled people (Mills and Lefrançois, 2018). Therefore, the child serves as a metaphor representing not only adult-child relations but to illustrate how one is positioned in relation to another (Burman, 2016). Consequently, the outsider has been those representing the views often of women, critical of masculine, heterosexist hierarchies attempting to challenge and decenter Eurocentric, white male insiderism, but extended its reach to the deconstruction of any system of power that maintains oppressive practices (Gold, 2016).

These tensions I have come to understand as indicative of much of the work which takes place with children and young people. Perspectives, including children and young people, but also those positioned as ‘other’ or ‘outsiders’ risk being marginalised and subjugated. Such understandings of inclusion, participation, views and voice, will form and underpin much of the direction of this doctoral research.

Project Progression – Developing the Research Design

The aforementioned points to concern informed the research design for this project. The research could have progressed towards a participatory action research project, however, initial scoping and informal observations brought to the surface, as I will come to discuss, a series of practices, which risk reproducing practices that maintained the status quo. Kemmis (2006) warns of undertaking action orientated research, which aims to improve practice techniques without concern for broader questions and assumptions, suggesting that rather than focusing on effectiveness, practice has to be understood. Kemmis continues and argues that by not adopting a critical stance of the social, cultural, discursive and material-economic effects this risks reproducing existing practices.

UNCRC
This doctoral research is formed on the seriousness and significance of the UNCRC as a document considered to strengthen the rights of children and young people. Despite being in existence for more than 30 years, the UNCRC still remains largely absent from some localised practices, including educational psychology discourse. Criticism of the research around the UNCRC and children’s rights suggest a practice of consensus building around children’s rights driving much of the implementation research (Reynaert et al., 2009; Quennerstedt, 2013). Reynaert et al. (2009) argues that while standard setting and implementation has value this shifts attention from problematising this new policy norm. Subsequently, Reynaert et al. (2012) proposes that critique of children’s rights involves questioning and analysing its underlying assumptions and practices. Rather attempts at reaching conclusions often begin with the belief that children have rights being the ‘end of dialogue’ with solutions to problems of rights identified in legal rulings as opposed to rights informed debate (Roose and Bouverne De Bie, 2008); p.434). If following this logic, then the UNCRC represents children’s rights being secured, with all that is left being the development of further strategies to strengthen enactment. However, this doctoral research commenced as an attempt to expand critical dialogue around the UNCRC and the ways it is understood and enacted in practice.

**Educational Psychology**

The outlined debate and dialogue needed within children’s rights, hopefully to be illustrated in this thesis, should be the starting point for research on children’s rights. EPs, along with the rest of the children’s workforce, aim to work in the best interests of children and young people, set out in a series of policies and professional and ethical practice codes. Nevertheless, as identified by Woods and Bond (2014), and forming part of the initial rationale for this project, the UNCRC has limited representation across EP governing documentation, with practices seen to represent implicit enactment rather than explicitly referencing the UNCRC.

The initial conception of the research project was underpinned by the assumption that EPs are ‘well-placed’ to lead on strategic educational change (Fallon et al., 2010). However, such an assumption relies on perspectives that the UNCRC is achieved, eschewing an approach that challenges the underlying premise of children’s rights, notwithstanding that EPs are part of a complex policy landscape, not working in isolation but together with the rest of the children’s workforce’s UNCRC duty-bearers (Blanchet-Cohen and Bedeaux, 2014).

**Problematising children’s rights knowledge**
The limited representation of the UNCRC in educational psychology governing documents presented what could be described as a gap in knowledge. The problem or ‘gap’ refers to the gap between the ideal reality made visible by the UNCRC and the actual reality (Pupavac, 2001) with Reynaert et al. (2012) rejecting that closing this gap requires implementing more rights, but that rights are a place to initiate dialogue. As follows, Quennerstedt (2013) makes calls to question the basic assumptions of the UNCRC, rejecting them as ‘truths’ and the idea of a true norm applicable in all contexts and circumstances (Quennerstedt, 2013). Thus, in examining the UNCRC, EPs’ understanding and enactment, is not to accept its universality, and the hegemonic status of rights, but to open up its emancipatory possibilities (Cordero Arce, 2015).

Taking on such a task requires the interrogation of dominant narratives and oppressive practices. In undertaking research critically (Kemmis, 2006), calls on Foucault’s concept of parrhesia (Foucault, 2001), which refers to the need to tell unwelcome truths appealing ‘to speak with the greatest courage and conviction we can muster when the time comes to speak honestly to the tyrant, the assembly, the head of the department, or our friend’ (Kemmis, 2006; p.461). Foucault’s parrhesia means to ‘think problematically’ (Foucault, 2001; p.186) or ‘problematization’, to question accepted truths (Bacchi, 2012), taking what is perceived as a truth and problematizing how we evaluate certain objects in pursuing new experiences (Lemke, 2011). This requires addressing ‘multiple sights of possibility’ with one perspective not perceived to be more advanced or accurate (Cannella, 1999; p.37), identifying what Foucault calls ‘problematizing moments’, or detecting moments where there have been significant shifts in practice (Bacchi, 2012; p.2).

This doctoral research, in drawing on Foucauldian approaches, will work towards identifying such ‘problematizing moments’ in exploring the status of the UNCRC within educational psychology. The use of Foucault, thus offers a starting point to begin to examine accepted truths within children’s rights discourse.

**Issues of Knowledge - Coming to Foucault**

In coming to this research my engagement with theory shifted my focus from one of socially constructed practices to examining the discursive. Such a shift arose from identified conflicts between how the UNCRC was understood and spoken of within educational psychology, available discursive tools and the scope of the theoretical and empirical research within educational psychology on the UNCRC. The academic literature within educational psychology favours research exploring how EPs gather children and young people’s views (Gersch and Cutting, 2007; Harding and Atkinson, 2009), though there are some interesting explorations of the right to play (Atkinson et al., 2017). Until recently, consideration of children’s rights, specifically exploring how the UNCRC is understood within educational psychology has been scarce. Even now, the literature has emerged largely from writing based in the US context, with the focus reinforcing the view that EPs are ‘well-
placed’ to implement children’s rights, but without exploration of EP’s understanding and knowledge of the UNCRC (see Nastasi et al., 2020). The UNCRC within educational psychology has been somewhat accepted, but simultaneously under-represented in educational psychology governing documentation (Woods and Bond, 2014), indicating a focus on how EPs understand the UNCRC and broader children’s rights discourses, over re-establishing existing gaps in UNCRC knowledge through the reproduction of practices through implementation strategies.

As I will come to explore, Foucault’s earlier work can be seen as a theory of knowledge (see Foucault, 1972), containing the conceptual tools which can be used to expound how certain knowledges regarding the UNCRC came to be and become privileged over others, known within educational psychology in varied, and both elaborated and incomplete ways.

This chapter began with attempting to determine my epistemological position before embarking on the story of the winding journey in arriving at Foucault, arguably indicative of the sometimes tumultuous and tangential methodological instructions, for instance, Couzens Hoy (1989) suggesting that there ‘may not be a single ‘Foucault’ (ibid. p.2). Foucault’s thinking changes direction with different theorists seeing this as development but also ambiguous (Couzens Hoy, 1986). Mills (2003) argues that discourse can be said to be one of the most commonly used, but also contradictory terms arising from Foucault’s work. Foucault himself acknowledges how at points he resists settling on set terms to describe particular ideas, one example is the interchangeable use of statement and discourse (Foucault, 1972).

Consequently, determining an epistemological position when undertaking Foucauldian analysis is fraught with challenges and contradictions. Rorty (1986) suggests that through the Archaeology of Knowledge, Foucault wants ‘to do something like epistemology’ (p.43) in outlining a successor to epistemology and exploring the will to knowledge. Foucault himself draws a line between the epistemological level of knowledge, or scientific consciousness, and the archaeological level of knowledge (Foucault, 1972). Foucault elaborates that in tracing back through a history of ideas, he aims to explore discourse from the perspective of the rules that constitute its existence. Foucault opposes terms such as ‘method’, ‘starting-point’ and ‘theory’, instead wanting to focus on the ‘will to truth’ (Rorty, 1989; p.43). Foucault proposes that sudden changes often are credited to the achievements of an individual or collective endeavour, a single discovery, yet these changes did not follow the same pace of change, occur at the same level or obey the same laws as might be found in a new field of study, but represent a redistribution of knowledge that alters the general form of science and also its relationship to other areas of knowledge (Foucault, 1972).

_Archaeology of Knowledge_
This brings us to the premise of the Archaeology of Knowledge, which examines how certain forms of knowledge come to count as knowledge. Foucault’s methods are underpinned by a critique of the historical development of a body of knowledge and how it is constituted in discourse. Foucault firmly situates his analysis in uncovering the discontinuities and ruptures of historical accounts. In embarking on an archaeology Foucault refers to historians’ focus on long periods in an effort to demonstrate stable systems and processes using models of economic growth, quantitative analysis, demographics, and technological advancements amongst many others. Previous questions of historical analysis that aimed to establish links between events and causal relationships are being replaced by different questions that decide what types of series should be created and the systems of relationships between them such as hierarchy, dominance and stratification (Foucault 1972). In particular, Foucault was interested in the study of the savoir, including philosophical ideas, politics and institutional and commercial practices. Foucault was concerned with how this informs formal knowledge – the connaissance, in order to demonstrate how formal disciplines, for instance psychiatry, physics, biology, do not materialise from a rational historical trajectory but appear irrationally from a savoir – from more intricate and interactive conditions (Scheurich and McKenzie, 2005). Foucault’s main concern with knowledge is how we come to know something and how something becomes regarded as fact but through excluding certain knowledge and formulating a particular discourse that is dominant and discredits valid statements in recognising this discourse as truth (Mills, 2003).

For Foucault the history of knowledge was not about tracing back ideas (Mills, 2003), but about how to ‘determine, in its diverse dimensions, what the mode of existence of discourses (their rules of formation, with their conditions, their dependencies, their transformations)... in order that the knowledge which is ours today could come to exist’ (Foucault, 1991a; p. 70). Foucault’s approach acknowledged regularities of practice but that these changed in different historical periods and across cultures, thus knowledge was situated in particular times and places (Olssen, 2003). Therefore, Young (1981) states that Foucault attends to the rules, systems and procedures, which constitute or are constituted by the ‘will to knowledge’ through identifying discursive rules and categories, which constitute the existence of a discourse. Hence, the aim of Foucault’s ‘archaeology’ is to establish what rules and procedures determine different forms of knowledge (Young, 1981).

Foucault’s Discourse

In analysing the production of knowledge Foucault undertakes analysis of discourse, often associated with how something is represented through language. However, Foucault refers to ‘discourse’ not as specific language use or text, speech or linguistic performance – but the description of rules, divisions and systems of a particular body of knowledge. In what way do the discourses specify the institutional division of knowledge
such as in medicine, science, psychiatry, biology, economics, etc. and how through these discursive practices are objects, concepts and strategies formed (Arribas-Ayllon & Walkerdine, 2017). Therefore, a Foucauldian approach to discourse would consider the set of structures and rules, which produce a discourse, as opposed to the text and utterances that are constructed (Mills, 2003). Foucault outlines discourse as a group of statements, yet not only the group of statements but how this statement or discourse was produced – what group of signs, series of sentences or propositions and what acts formulated and created this discourse and allowed it to come into existence (Foucault, 1972). Discourse is seen as a ‘complex set of practices’ that allow and enable certain practices but ward off and exclude others (Mills, 2003; p.54).

**Discursive Formation**

Foucault’s analysis does not only examine individual instances of discourse, but what he terms a discursive formation (Foucault, 1972), which are a group of statements concerned with the same topic and appear to produce a similar effect (Mills, 2003). For example, Foucault discussed how ‘madness’ and ‘statements different in form, and dispersed in time, form a group if they refer to one and the same object’ (Foucault, 1972; p.35). In other words, statements seen to represent madness, which name it and describe it, do not necessarily represent the same object they aim to describe, but are situated within the same discourse of madness. Thus, Foucault investigates forms of division within discourses where it is possible to discover the formation of the same theme in different groups of statements (or discourse) or the mobilisation of discordant themes (Foucault, 1972).

Therefore, for Foucault a discourse, is ‘constituted by all that was said in all the statements that names it, divided it up, described it, explained it, traced its developments, indicated its various correlations, judged it, and possibly gave it speech by articulating it, in its name, discourses that were taken at its own’ (Foucault, 1972; p.35). Foucault explains how the group of statements no longer refer to a single object, for instance the UNCRC, and will differ in quality to statements previously deployed. Analysis of discourse therefore comes not from establishing the permanence and unity of a discourse, but the spaces in which various objects emerge, are worked upon and transformed, thus discourse is the ‘interplay of rules that define the transformation of these different objects’ (Foucault, 1972; p.36). Therefore, to describe and analyse a discursive formation is to identify the dispersion of objects and the spaces between them to define the law of their division (Foucault, 1972).

In analysing a discursive formation Foucault is concerned with the ‘conditions of existence’. Foucault calls this the ‘rules of formation’ in identifying the relationships and system of dispersion between the object, mode of statement (enunciative modalities), concepts and thematic (or strategic) choices (Foucault, 1972). It is these
rules and systems that have been explored in the formation of the discourse of children’s rights in educational psychology, which form the conclusion to this doctoral thesis. The analysis in this doctoral research has been concerned with the construction of the object of rights, how statements of rights are deployed, the development of concepts and EPs thematic and strategic choices. The aim is not to reduce identified gaps, discontinuities and ruptures to one of knowledge and understanding, but to examine the intersecting practices and institutional discourses that inform how EPs account for the UNCRC and how children’s rights are understood and enacted in educational psychology.

Doing Foucauldian Research

This study aims to explore how EPs account their understanding and enactment of the UNCRC and broader discourses of children’s rights. Foucauldian discourse analysis (FDA) is not only focused on language and text, but rules, systems, the production of knowledge and how certain ideas are represented (see Foucault, 1972; Mills, 2003). Foucauldian informed research could traverse a range of data, with discourse analysis being the study of meaning making and cultural and social relations through examining orders and patterns within historical and institutional arrangements (Wetherell, 2010), with discourse being a ‘system of representation’ (Hall, 2010; p.72). Consequently, in exploring such patterns and relations research could include the use of both quantitative and qualitative data. Nevertheless, this research only dealt with qualitative data, both in the form of interviews and policy texts. Qualitative approaches are typically seen to be appropriate to explore how individual or groups attribute meaning to social and human phenomena compared to quantitative approaches which examine the relationship between variables to test theories and hypotheses (Creswell, 2014). In following this logic, this research does not aim to test theories or hypotheses and rejects positivist orientations to research with the aim of identifying a single truth, and is therefore qualitative in nature.

Getting to know the field

The initial phase of the research involved a number of months getting to know the field of educational psychology. In recognising that there was a period of ‘studying up’ required (Nader, 1972), time was spent with EPs, shadowing and having informal conversations regarding how EPs worked and operated, organised through existing professional networks and academic links to enable greater insight into the role.

Formal consent was not obtained for informal conversations as no data was recorded during these interactions, with the learning only informing the structure of the interview schedule and understanding of the policy context. The individuals spoken to or services I engaged with, were aware I was planning to undertake future research and that those informal interactions were not part of the data collection.
This does raise the question of what counts as data with some researchers arguing that informal conversations should be afforded the same status as interviews (Swain and Spire, 2020). However, viewing informal conversations as data gathering implies that data collection is not foregrounded by an ambiguous and indeterminate process of negotiating access to the field. Negotiating access requires ethical consideration, but can be a long and demanding process of gaining trust (Hammersley and Atkinson, 2019). Thus, the process of developing relationships and building networks in establishing a position to undertake research included informal interactions within mutual professional arenas to build knowledge in progressing towards formalised data collection.

**Selection of a Corpus of Statements**

To begin FDA a means of analysing the systems of representation needs to be identified. The identification of a ‘corpus of statements’ is the selection of discourse statements referring to an object of research (Arribas-Ayllon and Walkerdine, 2017). A statement, according to Foucault (1972) is not a single unit of language but an ‘enunciative function’ that comprises of several units, including sentences, propositions, series, tables and more. A statement is not to be attributed meaning, but serves a function in relation to the field of objects. The statement in use is exposed to a range of subject positions, coexisting with other statements to be used and repeated, thus it is not a singular statement with meaning, origin and limits, but exists in the operational field (Foucault, 1972). Therefore, selection of texts is dependent on what questions are being asked and the object of research, with Foucault being concerned with a range of texts, including historical documents, legal cases, rules and descriptions of institutional practices, alongside autobiographical accounts and diaries (Arribas-Ayllon and Walkerdine, 2017).

**Policy Context**

The object of inquiry in this doctoral research was the UNCRC and how EPs accounted for their understanding and enactment. The UNCRC in its material form is a document outlining the rights of children. However, it is imbued with discourses, such as those associated to children’s protection, agency and sociological status as a child. To undertake a full archaeological (see Foucault, 1972) inquiry of the UNCRC and the policy texts arising from it is beyond the scope of this research. Others provide analytical accounts of socio-historical circumstances of the creation of the UNCRC and the conditions of its existence, for example, the development process of the UNCRC (Freeman, 2009; Holzscheiter, 2010; Quennerstedt, 2013; Quennerstedt et al., 2018).
Nevertheless, the UK government commits to upholding the UNCRC through giving it ‘due consideration’ in policy and legislation (Written Ministerial Statements, 6 December 2010), therefore, an outline of the policy context is provided in Chapter 4 to frame the subsequent analysis.

*Producing material for analysis - interviews*

Interviews are a mechanism to learn about participants’ perspectives or accounts of their lives, feelings and experiences (Gubrium, 2012), facilitating into a subject’s social world, with the interview providing an account of activities, experiences and perspectives (Kvale, 2011).

The empirical material analysed in this thesis was produced for the purpose of the research, sometimes described as ‘contrived data’ (Potter, 2004). The use of interview data is sometimes considered to be less preferable in discourse analysis that naturally occurring data due to data collected in a natural setting being free from the influence of the researcher (Potter, 2004). Conversely, Nikander (2012) argues that discourse analysis often draws on contrived data, with Speer (2002) stating that data is always subject to researcher influence, with there being caution against positioning data said to be naturally occurring as ‘untouched by human hands’ (Silverman, 2006; p.159). In this sense, interviews are considered to be an amalgamation of the researcher and participant agendas, with all interactions vulnerable to bias, mediated by the agendas of the research and participant (Griffin, 2007).

Furthermore, the preference for naturally occurring data over interview data could be said to bias talk produced within the constraints of institutional structures. For instance, the use of observational data in this doctoral research would have potentially elicited data produced for the purpose and within the remit of the EP role. This would produce useful data for analysis, but may also limit EPs opportunity to explore how children’s rights can be understood in a different way. In this sense, interview data allowed for the exploration of specific discourses, drawing upon a degree of bias from the researcher, in attempting to counter hegemonic understandings of children’s rights and open up alternative spaces for practice.

Using a semi-structured interview approach will mean that there is a core set of questions developed to meet the research objectives, but are open-ended to provide scope for participants to introduce material pertinent to them and for the researcher to probe to elicit further information (Gillham, 2000). Semi-structured interviews are a commonly used method of producing material for discourse analysis and provide a space participants to shape the direction of the data collection (Jørgensen and Phillips, 2002).

Therefore, semi-structured interviews were undertaken in order to guide the interview so that certain themes and issues were explored (Jørgensen and Phillips, 2002), but also to allow for the participants to influence and
be able to draw on the discourses and practices that occur in their own practice. Thus, the texts were not naturally occurring texts but produced (Nikander, 2012) for this doctoral research.

**Interviews as Transformative**

Interviews in discourse analysis focus on how people make sense of themselves and each other through drawing on broader cultural knowledge to organise and narrate their understanding of different social categories (Nikander, 2012). In targeting particular discursive systems or practices, interview questions may be seen to be concerned with certain structures or discourses. For instance, Bonham and Bacchi (2017) argue that objects and subject positions are not just introduced into the interview but produced and integrated together within the interview in the ongoing process of the formation of objects and subjects in the interview process. Some can view leading questions as being problematic, however, in qualitative research this can be as a result of the interview interaction (Jørgensen and Phillips, 2002). Therefore, it is not the case that interview questions remain value and bias free but should contribute to the thematic development of knowledge and establish a dynamic interaction (Kvale, 2011).

Exploring knowledge of the UNCRC, specifically accounts of understanding and enactment, was the aim of this research, but also contesting dominant forms of knowledge through the interview process— to problematize children’s rights knowledge, and to challenge universal systems of thought and the creditability of meta-narratives of legitimation (Lyotard, 1984). In this sense, interviews in discourse orientated research are suggested to be a significant political resource, in disturbing certain world views (Bonham and Bacchi, 2017).

**Interview Schedule Development**

The aim of the interviews was not to reinforce or ‘test’ existing UNCRC knowledge, but to provide the opportunity and space to explore the different sites of emergence of the UNCRC. Interviews can be viewed as vehicles to introduce, co-create and construct knowledge and to challenge dominant discourses through posing questions that seek to problematize certain perspectives. The research interview was designed with respect to the knowledge of both the interviewer and participants. I drew on my own knowledge of children’s rights to inform the thematic content, alongside recognition of the expertise of the participants.

The interview questions (Appendix D) were informed by the literature review (Chapter 2) and the legislative context which constitutes educational psychology and the wider enactment of the UNCRC on a national context. The interview questions were structured to elicit debate regarding challenges of enactment, enabling the interview questions to extend beyond addressing generalised issues of children’s rights and participation i.e. how do you involve children and young people in decisions, towards tensions between protection and
participation and asking specific questions regarding policy and barriers to UNCRC enactment. While quite general questions regarding the UNCRC were presented, limiting the interview schedule to broad and open questions risks eliciting surface level accounts without being able to the relationship between ideas, alongside thoughts and actions regarding particular issues (Price, 2002). Therefore, more targeted and probing questions were devised to be able to elicit detailed responses regarding issues of children’s rights and how EPs understood the enactment of the UNCRC. In particular, EPs were asked specific questions about the legislative context, which focused on policy established as relevant in the course of my time with EPs getting to know the field. During this period I was introduced to and encountered policy documents EPs identified as relevant to their practice. Thus, this formed a focus for the interview schedule to explore how legislation and policy that EPs saw as relevant was situated in relation to the UNCRC. In conceptualising the focus of the thesis and specifically the interview schedule, the priority was policy and legislation, which had had been explicitly set out as mechanisms of UNCRC enactment in the UK, such as the SEND Code of Practice 2015 and the Children and Families Act 2014. Other, perhaps relevant legislation, such as the Equality Act 2010 was not included due to its implicit relationship to the UNCRC, noting it does not specifically reference the UNCRC. Within the context of this thesis, there was a need to limit the boundaries of the thesis with respect to legislation and policy, with the children and education policy landscape diverse and wide reaching, without there always being a clearly defined relevance to children’s rights. This was also particularly relevant when addressing areas where the UNCRC or issues of rights seemed absent or unaddressed for example, in relation to consent and children’s rights. The interview schedule could have been restricted to commonly known and deployed discourses of children’s rights, however, it also sought to exploring problematizing moments and interesting elements of practice that were unaddressed in the academic literature.

In this way, interviews can be perceived as somewhat goal-orientated with the interviewer drawing on institutionalised forms of dialogue creating a sequence of questions with particular local or practice relevance, also assuming the knowledge of the interviewee (Wang and Yan, 2012). EPs were considered to be able to cope and respond to being presented with questions requiring specific policy knowledge due to being professional practitioners with statutory obligations.

**How I arrived at my interviewees**

Purposive sampling is a form a participant sampling where participants are selected to meet the purpose or objective of the research (Palys, 2012) and involves the purposeful selection of cases, materials or events to create a corpus of material suitable for examining the issue of interest (Flick, 2012). Rather than aim to be representative of a certain population, purposive sampling is a strategy of managing diversity in the sample,
through widening variation to strengthen the scope of being able to capture the phenomenon being explored within the data (Flick, 2012).

Purposive sampling was undertaken through identifying participants through my established professional and University networks. As a practitioner who had previously worked in children’s services, existing professional relationships were utilised, alongside networks formed through preparation for this research, including with practising EPs and University tutors.

The focus of the research was EP’s understanding of the UNCRC, thus participants selected were qualified EPs who were currently working across England. No specification was thought to be required regarding the number of years qualified or working within educational psychology. The SEND policy landscape is ever changing, with new legislation and statutory guidance coming into effect at the start of the doctoral research. Consequently, current practicing participants would have experience of both prior and current legislative frameworks. The UNCRC was more than 25 years old when the research began and therefore, it would be expected that all participants would have some level of knowledge of children’s rights irrespective of the level this was enacted in their individual and organisational practice.

The participants sought were those who had experience of LA work, either through working within an LA or being commissioned by an LA to provide psychological advice. Namely, educational psychology services operate through traded services. An EP’s key function is to provide psychological advice regarding the SEND needs of children and young people (BPS, 2015), which typically locates their practice in the LA context. EPs historically were employed by LAs, but in recent years began to establish partly or fully traded organisations, trading services often with educational institutions (DfE, 2019). Even if fully traded, educational psychology services are often still employed by or trade with LAs to undertake and provide statutory psychological advice for children and young people undergoing EHCP assessments on behalf of the LA (BPS, 2018). For this reason, the participants sought were those which had experience of LA work, however, the sample selection aimed to incorporate diversity in how EPs had established their relationships with LAs, either through working within a LA, a traded organisation, partly traded, the third sector or privately. This was to enable diversity in perspectives within the sample.

The final corpus of material taken for analysis comprised of interviews with eight participants. When undertaking discourse orientated research, it is considered that a larger sample is not indicative of a higher quality study, with smaller samples being preferred due to the labour intensive work in discourse analysis (Potter and Wetherell, 1987). Generally, a small sample size is typical in qualitative research (Willig, 2008) with a small sample of four to six typically considered an appropriate sample size for discourse analysis (Parker, 2005). Importantly, qualitative research broadly, and discourse analysis in particular, is not seeking to
generalise findings, but rather aims to understand findings in more common sense terms, asking how knowledge of a single or small number of cases can be useful to those operating in other contexts (Given, 2008). Thus, qualitative research, including discourse analysis, aims to undertake an in-depth and contextualised approach to understanding of phenomena (Morgan, 2008). This doctoral research was not attempting to develop an alternative ‘grand theory’ maintaining hegemonic understandings of children’s rights (Cordero Arce, 2015), nor to establish a causal explanation, where a relationship is established between explanatory factors and outcomes, but to elicit process, rules and strategies at play in one case or a number of cases (Maxwell and Mittapalli, 2008). This doctoral research undertook a FDA, drawing attention to the ‘unsaid’, and bringing to the surface discourses which are less known. This can be achieved through a small sample of participants who can draw on their practice experiences to illustrate alternative understandings to how children’s rights are accounted for and understood in educational psychology. Therefore, this doctoral research used a sample size of eight.

Potential participants were contacted through email with the attached Participant Information Sheet (PIS) (Appendix E). If participants agreed to be interviewed for the research they were sent a follow up email with the consent form and interview schedule.

Snowball sampling was also undertaken with EP participants suggesting colleagues they felt would be interested in contributing to the research. In these circumstances participants contacted their colleagues on my behalf to request permission to pass on their details. These potential participants were then sent the PIS and consent form.

Efforts were made to ensure a varied sample with a range of experience both in terms of years qualified and organisation affiliation, through approaching EPs who worked in LAs, fully traded organisations, University tutors and EPs working privately.

**Ethics**

Research, which involves the co-construction of material necessitates a review of the potential ethical implications. Ethics in research refers to both why it is important to undertake the research and how is the research to be done ethically (Brinkmann and Kvale, 2015). The ‘why’ of this research lies in the importance of undertaking rights informed work, with Foucauldian approaches concerned with the macro structures, such as social and institutional practices (Wetherell, 1998) and how operations of power may conceal certain perspectives, voices or discourses over others.
How this research was conducted ethically is set out below in Table 1.

### Table 1

<table>
<thead>
<tr>
<th>Ethical Issues</th>
<th>Informed Consent</th>
<th>Privacy and Confidentiality</th>
<th>Right to Withdraw</th>
</tr>
</thead>
<tbody>
<tr>
<td>Informed Consent</td>
<td>Obtaining consent in an informed and unconstrained way (Hammersley and Atkinson, 2019).</td>
<td>Private data identifying the participants will not be disclosed (Brinkmann and Kvale, 2017).</td>
<td>Participants should be aware they are free to withdraw from the study at any time (Willig, 2008).</td>
</tr>
<tr>
<td></td>
<td>• EP participants were provided with a Participant Information Sheet and a copy of the interview schedule.</td>
<td>• Participants were given pseudonyms to protect their identities.</td>
<td>• Participants were informed of their right to withdraw through the PIS.</td>
</tr>
<tr>
<td></td>
<td>• Participants were asked to sign a consent form before the interview commenced.</td>
<td>• Potentially identifying information was removed from research transcripts, for example, a participant’s place of work.</td>
<td>• Participants were provided transcripts of their interviews so were able to withdraw incidences of data.</td>
</tr>
<tr>
<td>Privacy and Confidentiality</td>
<td></td>
<td>• Participants were provided with anonymised transcripts and provided the opportunity to request any further information to be removed.</td>
<td></td>
</tr>
<tr>
<td>Right to Withdraw</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

In line with the University of Manchester’s ethical guidelines a formal research ethics application via the Ethical Review Manager was not deemed necessary, due to research being undertaken with professionals...
about issues that fall within their professional remit. Confirmation of this was provided by the University of Manchester ethics committee (Appendix F). The research still followed all research protocols regarding gaining informed consent and providing a PIS using the University of Manchester template, to ensure participants were fully informed about complaints procedures and data privacy.

**Participants**

EP participants were asked how they would like their role and place of work described and what pseudonym they would like (Table 2). It is not possible to provide the specific experience of each EP as this risks breaking anonymity, however, as the EPs accepted their invitation to participate it can be assumed they have or would like to develop knowledge around the UNCRC. Additionally, the EPs all had experience of working in or liaising with LAs and schools.

**Table 2**

<table>
<thead>
<tr>
<th>Pseudonym</th>
<th>Work Location</th>
<th>Length of time qualified</th>
</tr>
</thead>
<tbody>
<tr>
<td>Susan</td>
<td>Local Authority EP</td>
<td>Qualified less than 5 years.</td>
</tr>
<tr>
<td>James</td>
<td>University Lecturer</td>
<td>Qualified more than 10 years.</td>
</tr>
<tr>
<td>Michael</td>
<td>Local Authority EP and University Lecturer</td>
<td>Qualified more than 10 years.</td>
</tr>
<tr>
<td>Thomas</td>
<td>Local Authority EP and University Lecturer</td>
<td>Qualified less than 5 years.</td>
</tr>
<tr>
<td>Eleanor</td>
<td>Local Authority EP and University Lecturer</td>
<td>Qualified more than 10 years.</td>
</tr>
<tr>
<td>Margaret</td>
<td>Third sector EP/fully traded</td>
<td>Qualified more than 10 years.</td>
</tr>
<tr>
<td>Joseph</td>
<td>Local Authority EP</td>
<td>Qualified less than 5 years.</td>
</tr>
<tr>
<td>John</td>
<td>Self-employed EP working privately. Previously employed in a LA.</td>
<td>Qualified more than 10 years.</td>
</tr>
</tbody>
</table>

**Interview Process**
Interviews were undertaken in a location convenient to the participant, in a quiet and private room, including rooms within LAs and University buildings across England. The interviews were conducted between May 2018 and September 2018, with each interview taking 1-1.5 hours.

The EP participants were provided a copy of the interview schedule in advance. The interview was semi-structured. Participants were asked the questions from the interview schedule, but were able to extend beyond this to account for issues, experiences and practices they saw as being relevant. Interviews were audio recorded using an encrypted Dictaphone device.

**Transcription**

Interview recordings were transcribed into written text to facilitate the analysis. The analysis was focused on the discourse content rather than discourse structure of talk (Bucholtz, 2007). This means that transcription was not verbatim, with incomplete words or vocal sounds, such as ‘erm’ or ‘ah’ excluded as were not seen to communicate relevant meaning and content, termed ‘tidy transcription’ by (Henderson, 2018). The focus on content over structure is also indicative of Foucault’s Archaeological approach, which is concerned with the description of statements over deeper interpretations of hidden, underlying meaning (Foucault, 1972).

Participants were sent password protected and anonymised transcripts to member check. Participants were given an agreed timeframe of two weeks to respond and suggest any amendments or clarifications. Only one participant requested changes and these were related to potentially identifying information where a particular work project had been described in the interview. This was removed from the data.

**Foucauldian Discourse Analysis**

**Discourse Analysis – formulating an approach**

Providing a description of the steps to undertake a FDA is somewhat at odds with the principles which underlie Foucault’s approach to discourse. Foucault is concerned with challenging the linear and organised fashion of the development of history, including disciplines and ideas, and argues for attention to the discontinuities of discourse. This then presents a paradox in attempting to organise and present the methodological approach. Furthermore, establishing method implies an order where certain aspects of discourse analysis are prioritised and conducted ahead of others. This is the case for certain aspects of the analysis, though overall the analysis took on a circular and iterative process where the relationships between one statement of discourse, include its system of rules and practices, led you back and forth.
This analysis was underpinned by Foucault’s *Archaeology of Knowledge* (1972), which provided a framework to explore how certain discourses surface over others, the exploration of contradictions and discontinuities, and how discourses become dispersed and reproduced across policy texts and practices. For Foucault, the archaeological approach examined the conditions of existence of a discursive formation. In doing so Foucault analysed the formation of objects, enunciative modalities, the formation of concepts and the formation of strategies (Foucault, 1972), which I will come to expand upon in subsequent sections.

In making sense of Foucault’s Archaeology, specifically the steps I undertook to conduct the analysis, I drew on key texts where Foucault’s methods were unpicked and translated into methods to use in undertaking FDA. Informing my approach to analysis were Kendall and Wickham (1999) who provide a useful account of key activities and key steps in carrying out Foucault’s Archaeological Analysis. However, in my reading they do not stay true to many of Foucault’s terms, eschewing key parts of Foucault’s approach, such as ‘concepts’. Arribas-Ayllon and Walkerdine (2017) offer an informative and illuminative interpretation of several Foucault’s concepts considered to form part of a Foucauldian type analysis. Their approach, however, veered into Foucault’s wider work, incorporating ‘technologies’ typically associated with Foucault’s governmentality (Foucault, 2002) and ‘subjectification’, which arises from later work on ethics and subjectivity (Arribas-Ayllon and Walkerdine, 2017). Correspondingly, Willig (2008) provided an account that also incorporated a range of Foucault’s ‘tools’ and therefore, provided a useful resource to aid in transforming Foucault’s writings into process, yet Willig’s text evades aligning itself with any particular stage of Foucault’s work. Mills (2003) gives particular attention to Foucault’s Archaeology of Knowledge and helpfully and skilfully defines and elaborates many of Foucault’s ideas and strategies, and thus provided a useful mechanism to check my own interpretations of Foucault’s work.

**Discourse Analysis – the order of work**

The below account provides an overview of how I approached my FDA. Through writing I have attempted a semblance of order, yet it is important to emphasise the cyclical and iterative nature of FDA, which I experienced.

**Getting Started**

Kendall and Wickham (1999) propose a series of steps to follow to undertake an Archaeological analysis, usefully breaking down certain aspects of Foucauldian analysis, but do not articulate a particular order or starting point to begin a Foucauldian analysis. This is arguably indicative of Foucault’s general approach, suggesting a rejection for a general beginning point for analysis. Arribas-Ayllon and Walkerdine (2017) suggest
selecting a corpus of texts which include the object being researched, which in this case could be the UNCRC. Nevertheless, this implies an earlier identification of the object, prior to the commencement of research, in order to facilitate the selection of texts. For instance, searching for policy texts where rights were represented led me to the CoP and subsequent greater scrutiny of the object of rights within the text. This represents a more iterative process, though irrespective of the order of research, still requires close scrutiny of available texts to identify and establish the presence of the object – rights in identifying all the instances of the object in the text, including both implicit and explicit references (Parker, 1994; Willig, 2008).

**Formation of Objects**

Children’s rights is constructed as an object of discourse through the production of the UNCRC. The UNCRC, and children’s rights more generally are constituted through multiple and intersecting discourses, therefore are ‘statements different in form, and dispersed in time, form a group if they refer to one and the same object’ (Foucault, 1972; p.32). However, children’s rights, should not be seen as a ‘unity of discourse’, but should be known through space where objects emerge and are transformed (Foucault, 1972). Thus, children’s rights is constituted by discourse, but also constructs the object of discourse. The existence of an object of discourse requires charting their ‘surface of emergence’, ‘authorities of delimitation’ and ‘grids of specification’ and the interrelation between these (Foucault, 1972; p.45-46).

To explore the formation of objects the subsequent steps were followed.

- The identification of instances of the object in the text (Willig, 2008), including the regularity of statements in a non-interpretative way (Kendall and Wickham, 1999) or the object’s ‘**surface of emergence**’ (Foucault, 1972) within EP accounts or policy texts. This involved:
  a. Reading and re-reading both EP accounts and policy texts.
  b. The coding of signifiers, statements or terms, which refer to rights, alongside associated terms such as voice, views and participation (see Table 3).
  c. Sourcing associated policy texts, which were either named in policy texts or in EP accounts for further coding.

**Coding in Discourse Analysis**
Analysis of data often begins in broadly a similar way, through coding, or selecting relevant parts of the data for closer analysis. Coding typically refers to the sorting and categorising of data in determining patterns in the data (Taylor, 2001). Coding is often differentiated as inductive and data-driven, or a deductive and theory driven (Boyatzis, 1998). However, others argue that it should not viewed as ‘dichotomously opposed or mutually exclusive’ (Silver and Lewins, 2017; p.170). Dey (2003) argues that the dichotomy of deductive and inductive is futile as data cannot be analysed without ideas, with ideas also being constructed by the data being analysed, thus research often using a combination of both (Fereday and Muir-Cochrane, 2006).

Coding has been recommended as an initial task in discourse analysis. Rather than coding being part of the analysis with the categorisation and grouping of different codes into themes, coding in discourse analysis is more related to the identification of instances of data for further analysis (Potter and Wetherell, 1987). This can involve the selection of singular units of text or signifiers. Foucault (1972) posits that a signifier is the smallest unit available for analysis, so in other words, coding took the form of identifying signifiers or groups of signifiers.

Codes, in this doctoral research, were selected through their relationship to the research questions, existing policy texts and theoretical frameworks. Therefore, to respond to the research questions of how EPs understood and enacted the UNCRC, codes were determined by identifying a range of signifiers contained in UNCRC, for example, ‘convention’, ‘articles’, ‘best interest’, alongside broader understandings of children’s rights, informed by the academic literature, for example, discourses of children’s voice.

The process of coding involved going through the EP’s interviews and policy texts, highlighting relevant instances of text using the highlighting function in Microsoft Word (Appendix G).

Example Codes
**Table 3 - Coding**

<table>
<thead>
<tr>
<th>Pre-determine/deductive codes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>UNCRC</strong></td>
</tr>
<tr>
<td><strong>Rights</strong></td>
</tr>
<tr>
<td><strong>Participation</strong></td>
</tr>
<tr>
<td><strong>Best Interests</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Data driven/Inductive</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Person-centred Planning</strong></td>
</tr>
<tr>
<td><strong>Consent</strong></td>
</tr>
<tr>
<td><strong>Co-research</strong></td>
</tr>
</tbody>
</table>

It is important to note that coding was not restricted to one or the first reading of the data, meaning coding was an iterative process where transcripts were revisited to undertake further coding (Silver and Lewins, 2014). This does not involve the retelling or summarising of what has already been identified in the text (Burman, 2003), for instance, in finding more instances of identified codes, but to undertake an analysis, which involves a cyclical process of moving between data produced by EP accounts, policy and academic literature.

Analysing involves more than ‘spotting’, but in obtaining further evidence to support claims to the existence of certain discursive repertoires, ideologies or discourses, through illustrating how certain arrangements of talk are deployed by the speaker in the context of the interview or interaction being explored (Antaki et al. 2003). These patterns can be expounded through connecting to structures exterior to the text, such as institutional and common-sense other practices (Antaki et al. 2003), along with drawing on theoretical analyses of how historical and cultural contexts construct how certain practices come to exist and function (Burman, 2003).

This involved identifying patterns of discourse in policy texts in both substantiating EP claims or in exploring contrasting practices or contradictions in constituting a discourse of children’s rights (Foucault, 1972) to be able to elaborate on the characteristics of the text (Antaki et al. 2003). See Appendix G reflections on the creation of a code.
Through establishing the ‘surface of emergence’, instances of rights were identified across different fields and practices. This leads onto establishing ‘authorities of delimitation’ and how institutions and authorities delimit, designate and name rights and establish it as an object (Foucault, 1972; p.46). How has rights been constituted as an object?

**Example:**
The UK government has not incorporated to the UNCRC into domestic law, which ‘delimits’ or restricts its enactment. Another example is how best interest is positioned as being of primary concern could restrict the enactment of Article 12.

- Rules for the repeatability of statements, such as how statements are deployed over others (Kendall and Wickham, 1999). As such the analysis is trying to determine the ‘**grids of specification**’ or how different kinds of rights are ‘divided, contrasted, related, regrouped, classified, derived from one another’ (Foucault, 1972; p.45) – all as objects of rights. A key example, is how children’s participation, views and voice are often a proxy for children’s rights (Appendix G).

- The identification of the sayable and visible, which refers to the set of statements and arrangements available, for instance instructions to subjects and visible objects (buildings, instruments) (Kendall and Wickham, 1999). What is visible can also be said to refer to material objects and the ways in which these constitute or are constituted by a discourse. The key example being the UNCRC, which can be articulated and described, but is also a material object that represents children’s rights. Policy texts also offer examples as the visibility of rights contributes to the constitution of a discourse of rights.

**Enunciative Modalities**
In the identification and analysis of discursive formations, Foucault explores what he terms ‘enunciative modalities’, which refers to the origin and construction of statements (Foucault, 1972), in other words who is deploying statements in formation of the discourse. The analysis of ‘enunciative modalities’ is concerned with three central questions; who is speaking; the institutional sites they are speaking from; and the position of the subject, or the relationship between who is speaking and what is being spoken of (Foucault, 1972). This can be understood, not just through who speaks a sentence (or relays a statement of any kind), but how has the authority be taken seriously and to hold knowledge and expertise. An individual’s authority to speak the ‘truth’ will differ across different contexts (Garrity, 2010). Hence, from what position do EPs stand in their dispersal and distribution of the discourse of children’s rights in constituting a discourse of rights.

Outside of Foucault’s Archaeology of Knowledge (1972) there is little explicitly written of ‘enunciative modalities’ across many of the accounts of Foucauldian type analyses, and the concept certainly goes
unaddressed in popular accounts providing direction on Foucault’s methods. For example Kendall and Wickham (1999) suggest to analyse the positions established between subjects, with Willig (2008) and Arribas-Allyon and Walkerdine (2017) referring to ‘subject positions’. This implies that discourse constitutes, not only objects, but subjects who can take up available positions within networks (Willig, 2008) providing positions for which subjects can speak the ‘truth’ (Arribas-Ayllon and Walkerdine, 2017).

Therefore, using Foucault’s three central questions (Foucault, 1972) the following subject positions were explored:

- **Who is speaking?**
  - This includes consideration and description of who is afforded the right to speak, who is qualified, the status of individuals, and competence and knowledge, such as institutions, systems, pedagogic norms and legal conditions.
- **The institutional sites they [EPs] are speaking from.**
  - An example of how this part of the analysis was approached was through examination an EP’s account regarding the different institutional structures EPs were accountable to (Appendix G). The understanding from extracts such as this one influenced the direction of the data analysis.
- **The position of the subject.**
  - This includes the spaces and positions it is possible for EPs to occupy and how their role may shift.
  - EPs occupy the role of an UNCRC Duty Bearer and therefore, the analysis explored how EPs enact and are positioned in this role.

**Formation of Concepts**

Foucault’s (1972) formation of concepts entails examination of how certain concepts lead to the production of new later concepts, an example within this this doctoral research being how the advent of the UNCRC produced ideas of children’s voice. In other words, ‘statements formulated elsewhere and taken up in a discourse’ (Foucault, 1972; p.64) occupy the discursive field.

In the analysis of discourse Foucault emphasised how discourse is constituted by ‘discontinuities, systems and transformations (Foucault, 1972; p.15), which is central to the formation of concepts. This particular idea of Foucault eschews the writings of several authors (Arribas-Allyon and Walkerdine, 2017; Kendall and Wickham, 1999, Willig, 2008). Willig (2008) does mobilise an idea of ‘action orientation’ to consider how the varying constructions of the object are deployed in different discursive contexts, which seemed to reflect parts of how Foucault defined the formation of concepts. However, Arribas-Allyon and Walkerdine (2017) shift their
method of discourses towards Foucault’s later work and include ‘technologies’ and ‘subjectification’, illustrative of Foucault’s ‘governmentality’, ‘ethics’ and ‘care of the self’, thus the transformation of concepts is largely neglected.

To examine the formation of concepts Foucault recognises how statements that belong to a different domain of objects and discourse, but are present and circulating within the discourse under analysis (Foucault, 1972). This underpins a central question to Foucault’s examination of discursive formations you are not trying ‘to isolate small islands of coherence’ but describe a system or reveal unknown conflicts, to identify forms of division and systems of dispersion (Foucault, 1972; p.41).

Foucault provides examples of how discourses can be worked upon and the procedures of intervention, which can be applied to statements to facilitate their transformation including; ‘techniques of rewriting’, ‘methods of transcribing’, and ‘modes of translating’ (1972; p.65). Foucault is concerned with how discourse has become dispersed, thus he looks between concepts at the ‘deduction, derivation, and coherence, but also of incompatibility, intersection, substitution, exclusion, mutual alteration, displacement’ (Foucault, 1972; p.67). Consequently, he advocates for the interrogation of concepts seen to be truthful, but also those criticised, rejected and excluded (Foucault, 1972), thus illustrating concern for systems of exclusion (Hook, 2001).

In undertaking analysis informed by Foucault’s (1972) formation of concepts, the following features of discourses outlined by Foucault were considered:

- Descriptions of concepts.
- Interpretations of concepts.
- Implications and effects of concepts.
- Justifications.
- Generalisation of concepts.
- The dependence of statements on other statements.
- The rhetorical schemata which combines certain statements.

See Appendix H for a reflection on the formation of concepts.

Formation of Strategies
Discursive formations are constituted through the organisation of objects, concepts and enunciative modalities, giving rise to the formation of strategies. Strategies, according to Foucault (1972) are themes and theories, thus a strategy will likely to be formalised procedures and processes commonly known, or ‘strategies’ or what could be understood as practices. Willig (2008) defines practices as how discursive constructions and
subject positions either open up or limit possibilities for action. Consequently certain practices become legitimated over others. In other words, strategies could be said to refer to how discourses are deployed across different fields and understand in relation to our own subject positions.

Foucault states that strategies are determined by ‘points of diffraction of discourses’ (Foucault, 1972; p.73). These points are initially considered to be incompatible, referring to different objects, concepts or enunciation. At the same time, they can be characterised as uniform due to being created under the same set of rules and presented as alternatives to each other, but also can take on different levels of importance (Foucault, 1972). Thus, referring to how certain practices or strategies become prioritised over others or as Hook (2007) states to the exclusion of others.

Foucault identified three key elements in the formation of strategies, which were:

(i) **Points of diffraction**
These points are initially perceived to be incompatible, with the appearance of two objects, enunciations or concepts, seen to be contradictory. Nevertheless, they are also viewed as points of equivalence, but instead of representing a flaw or inconsistency, an alternative is formed, further dispersed until new discursive sub-groups are formed, which can be elevated and transformed into dominant discursive groups (themes, theories, concepts) (Foucault, 1972).

(ii) **Alternatives**
This refers to possible alternatives not realised, for instance strategies that failed to emerge. Foucault proposes that in accounting for choices made the authorities that guided a certain choice must be described.

(iii) **Determination of theoretical choices**
This refers to ‘the rules and processes of appropriation of discourse’ (Foucault, 972; p.75) or they ways in which a discourse is deployed elsewhere (Appendix I).

**Writing and Presenting a Foucauldian Discourse Analysis**

When reading Foucault’s work it is possible to see the interweaving and overlapping analysis of objects, subjects, concepts and strategies, consequently presenting a challenge when writing up a FDA. Foucault’s work is not linear and standardised, but is indicative of the development of his thinking over a length of time (Given, 2008).
However, the description of the findings in a FDA is the opportunity to illuminate regularities, alongside contradictions and discontinuities in the discourse. The presentation of findings should incorporate examples of ‘data units’ where typically, only a small extract of the data can be included, supported by other forms of evidence (Greckhamer and Cilesiz, 2014). In the case of this thesis, extracts taken from the wider accounts provided by EPs, offer exemplars of claims made by all participants, illustrating commonly used signifiers and regularities, contradictions and discontinuities of practice evident across EP accounts provided for this doctoral research. Such extracts were selected due to their eloquence and clarity, in terms of communicating and illustrating key discourses analysed in this doctoral research.

The analysis of EPs extracts will be underpinned by the academic literature and reference to relevant policy texts. Foucault values attention to ‘the questioning of the document’ (Foucault, 1972; p.6) due the relevance of the document in the production of knowledge and claims to truth (ibid), thus situating and countering EPs claims allows for greater interrogation of these in relation to dominant discourses circulating across children’s rights research. Furthermore, Foucault’s analysis takes account of the macro context with discourse a ‘system of representation’ part of the apparatus of institutional settings (Hall, 2010; p.72) constituted by structural power relations between discourse, institutions and social practices (Willig, 2008). Thus, such debates are represented across the academic literature and policy texts and were drawn upon to both elucidate and counter EPs’ accounts. Equally, while the review of literature in Chapter 2 provided an overview of key debates and addressed some known tensions within children’s rights, the nature of discourse analysis is to bring to the surface discourses, consequently the analysis of EPs’ extracts and emerging discourses was supported by further review of the academic literature, which is argued by Greckhamer and Cilesiz (2014) to be necessary to underpin claims being made.

In addition, the analysis in parts draws on other theoretical frameworks to strengthen and expand the effects of certain discourses. Foucault himself regularly refers and uses other theorists to illuminate his critique of social practices and compliment his description of discourse.

**Trustworthiness, Rigour and Representation**

Qualitative research typically draws on concepts of trustworthiness, for example, using Guba’s (1981) criteria of credibility, transferability, dependability and confirmability. While, not entirely applicable to discursive analytic approaches, it marks a useful starting point to consider how your research findings will be determined and understood by others in evaluating the quality in qualitative research. Trustworthiness, as a concept, is
problematic in FDA as the central premise of Foucault’s work is the problematization of knowledge, with certain perspectives and types of knowledge constructed as forms of truth (Foucault, 1972). Nevertheless, trustworthiness does not need to refer only to trusting the validity of the findings, but in trusting the rigour of the analysis.

Others reject defined criteria in evaluating quality (Hammersley, 2007), however, concepts common to evaluating quality and applied to discursive approaches include rigour, transparency, evidencing and representativeness (Greckhamer and Cilesiz, 2014; Hammersley, 2007).

Rigour, credibility and confirmability

Rigour can be demonstrated through focus on the research process (Davies and Dodd, 2002; Ryan, 2004), specifically concerned with the selection of appropriate analytical approaches with a clear articulation of the researcher’s theoretical and epistemological commitments (Greckhamer and Cilesiz, 2014). This interconnects with aspects of Guba’s (1981) criteria of trustworthiness, particularly the notions of credibility, which refers to the nature of truth statements, but rather than establishing that certain statements are true, it promotes a ‘truth’ in context which best fits the phenomena being explored. In a similar way, confirmability recognises the multiple realities interacted with and how a researcher’s own predilections influence the research process (Guba, 1981) rather than a kind of confirmability, which ensures findings stem from the experiences and ideas of participants, as opposed to the researcher’s views and preferences (Shenton, 2003). Therefore, confirmability in this thesis is through recognition of how discourse will be shaped and influenced by the researcher’s own epistemological position and the discursive formations they operate in where ‘the process of analysis is always interpretive, always contingent, always a version or a reading from some theoretical, epistemological or ethical standpoint’ (Wetherell, 2010b p.384). Crucially, the researcher positioning can account for the beliefs that inform decisions, reasons for certain methodological choices and theoretical audit trail (Shenton, 2003).

Table 4 – rigour, credibility and confirmability

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rigour</td>
<td>The adoption of established research methods A Foucauldian approach was used as an overarching framework, using Foucauldian Discourse Analysis.</td>
</tr>
<tr>
<td>Familiarity with the research field</td>
<td>Time was spent before data collection commenced talking and shadowing educational psychologists. Conferences were also attended.</td>
</tr>
<tr>
<td>-------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Triangulation</td>
<td>Data was triangulated with analysis of policy texts.</td>
</tr>
<tr>
<td>Peer scrutiny</td>
<td>Member checking was undertaken of raw data. Preliminary data was presented at educational psychology research conferences. Trends, issues and practices identified in the findings were discussed with practicing educational psychologists.</td>
</tr>
<tr>
<td>Qualifications and experience of the researcher</td>
<td>My qualifications were relevant to exploring issues of rights in relation to children and young people including a MSc Community Psychology and Postgraduate Diploma Youth Work. Both degrees focused on social justice, advocacy and anti-oppressive practice. My undergraduate degree was a BSc Psychology and therefore, enabled me to understand the psychological theories and concepts used in educational psychology. My professional experience was working as a Children’s Rights Advocate and Participation worker for children’s charity focused on social justice and wellbeing. My roles in this organisation involved working closely with LAs.</td>
</tr>
<tr>
<td>Member checking</td>
<td>Transcripts were sent to participants to check their accuracy.</td>
</tr>
<tr>
<td>Detailed description of the phenomenon being researched</td>
<td>This has been addressed in the literature review, but also through the analysis of policy and through the integration of academic literature in the analysis chapters (Chapters 5-9).</td>
</tr>
<tr>
<td>Review of previous research findings</td>
<td>This has been addressed in the literature review (Chapter 2), but also through the analysis of policy and through the integration of academic literature in the analysis chapters (Chapters 5-9).</td>
</tr>
</tbody>
</table>
Transferability

Ordinarily the findings from qualitative studies are small and context specific, therefore, preventing findings and conclusions being generalised to other contexts or populations (Shenton, 2003). Some argue that it is possible represent how certain findings have transferable implications across contexts taking on reflexive approaches in considering the theoretical and practical implications and ethical contributions (LeGreco, 2014). Discourse analysis can focus on meso level practices of language use and text, but also how discourses are indicative of wider social patterns and practices in how social order is produced and reproduced through discourse (LeGreco, 2014; Ussher & Perz, 2019). Specifically, FDA is concerned with the relationship between discourse, subjectivity, practice and their material conditions in the context of ‘wider processes of legitimation and power’ operating within institutional practices (Willig, 2008; p.107). This involves the problematization of certain social issues and practices (Bacchi, 2012) in interrogating what Willig (2008) terms ‘ways-of-seeing and ways-of-being’ (p.5), which privilege certain kinds of reality in the authorisation of prevailing power relations and social structures, thus enabling reflexivity of how discursive practices analysed at the individual or group level are indicative of broader social concerns.

Table 5 - transferability

<table>
<thead>
<tr>
<th>Transferability</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of participants</td>
<td>8</td>
</tr>
<tr>
<td>Number of organisations</td>
<td>6</td>
</tr>
<tr>
<td>Length of data collection</td>
<td>Three months</td>
</tr>
<tr>
<td>Description of context</td>
<td>See Chapter 2 and Chapter 4</td>
</tr>
</tbody>
</table>

Dependability

Dependability can refer to providing clear and comprehensive accounts of the research process so the research to be repeated, though recognising that the shifting of issues of researching social contexts means the same results will likely not be obtained (Shenton, 2004). It should also be recognise that the situated regarding the EP and researcher’s subject positions and positionality cannot be ‘repeated’. Nevertheless, transparency of analysis in illustrating the detail of the analytical process, including outlining the shift from texts constituting the discourse to interpretations and the function of discourse (Greckhamer and Cilesiz,
2014), as outlined earlier in this chapter and in Appendices G, H and I, can illustrate the basis of the claims and their applicability in a wider context.

**Moving to the Analysis**

It was the aim of this chapter to set out my own researcher positioning and the theoretical framework. This was to elucidate the epistemological orientations underpinning this thesis, alongside how the research will treat the UNCRC and children’s rights discourses, in terms of respecting and hoping to progressing children’s rights, but appreciating current limitations and concerns regarding how children’s rights can be understood. The upcoming analysis chapters will explore the accounts by EPs in examination of the discourses and practices at play within educational psychology.
Chapter 4 - United Nations Convention on the Rights of the Child: Legislative and Policy Context

The literature review introduced the educational psychologist (EP) role and the context in which they work. However, the EP (or any practitioner) context is constructed through and from policy texts and the institutional structures in which they are positioned. Significantly, the UK government’s commitment to give ‘due consideration’ to the UNCRC through legislation and policy means the UK’s commitments to the UNCRC are translated and reproduced through policy texts and institutional discourse. In order to explore the legislative and organisational context supporting how EPs’ account for their understanding and enactment of the UNCRC, consideration of the key policy texts underpinning EP’s practice is required.

This review of the policy context will both illustrate and challenge the strength of key policy discourses, attending to what Ball (2017) explains are policy trajectories of ‘family relationships’ that accumulate, evolve and form policy narratives and form objects of which they speak. Thus, narratives of child rights are formed through networks of relationships and systems that constitute policy discourses and are enacted in practice. Policy enactments subsequently constitute ‘some of the discursive artefacts and activities that make up, reflect and ‘carry’ within them the key policy discourses’ within the policy documents (Maguire et al., 2011; p.597), thus producing a discursive system of which EPs operate within. Discourses are then reproduced and transformed into numerous documents and regulatory texts, files, records and so forth, distributed and producing practices, representing broader social processes, in the construction of an object, text, or architecture, as a discursive organisation of space (ibid).

Exploring how EPs account for their understanding and enactment of the UNCRC requires attention to the complex UK policy landscape within children’s services, special educational needs, education and educational psychology to highlight the foundations of which EPs situate their children’s rights knowledge.

Understanding the UNCRC through Policy

The United Nations Convention on the Rights of the Child (UNCRC) (UNICEF, 1989) is a policy text, a blueprint for a particular ‘vision’ of rights’, constructing what I outlined in Chapter 3, as a hegemonic practice (Cordero Arce, 2015), but often described as a process of consensus building without interrogation of the meaning of rights (Quennerstedt, 2013; Quennerstedt and Robinson, 2018). In this way, the UNCRC is not a static document containing set definitions of rights, but remains ever changing and contested through its constant reworking through various policy enactments where policy is the transformation of ‘textual interventions in
practice’ (Ball, 1993; p.12). Therefore, the UNCRC legislative and policy context underpins how EPs will account for their understanding and enactment of the UNCRC.

**Government Commitments – the National Policy Context**

Enactment of the UNCRC in the UK is firmly situated within legislative and policy commitments (Joint Committee on Human Rights, 2015) with the UK government stating that:

*The Government will give due consideration to the UNCRC articles when making new policy and legislation. In doing so, we will always consider the UN Committee on the Rights of the Child’s recommendations but recognise that, like other state signatories, the UK Government and the UN committee may at times disagree on what compliance with certain articles entails.* (House of Commons, 2010 )[emphasis added]

However, the UK government’s commitment to upholding the UNCRC remains in question as it still fails to fully incorporate the UNCRC into domestic law (CRAE, 2018), restricting enactment to ‘due consideration’ in the development of policy and legislation. For some, this is seen as a barrier to the full realisation of the UNCRC (CRAE, 2018).


More recently, the devolved nations of England, Scotland, Wales and Northern Ireland have appointed their own Children’s Commissioner so are able to set their own local priorities regarding children’s rights. However, opposition to the UK government’s arguably limited enactment has grown with Scotland more recently committing to soon incorporating the UNCRC into domestic law (Gadda et al., 2019). In this way, the UK government’s commitment are increasingly only applicable to England. For the purpose of this thesis, when discussing the UK government’s UNCRC strategy this is in relation to its applicability to England.

The Committee on the Rights of the Child (CRC) has called for the UK government to incorporate the UNCRC into domestic legislation to ensure it is justiciable under UK domestic law (Committee on the Rights of the Child, 2016) in ensuring that public bodies, for example schools, would comply with the rights set out in the UNCRC. A child would be able to go to court to challenge decisions that breached their rights (CRAE, 2014). For instance, the European Convention on Human Rights (ECHR) is largely incorporated into UK law through the (Human Rights Act 1998), allowing challenge in court for breaches to human rights.

Crucially, however, not all rights within the UNCRC are included in the Human Rights Act 1998 (CRAE, 2014). Indeed, total reliance on the Human Rights Act to protect children negates the very foundations of UNCRC’s
remit – ‘that childhood is entitled to special care and assistance’ (UNICEF, 1989 p.3). As I drew attention to in the earlier literature review, children risk remaining the subject of rights that are protected on their behalf, rather than enabled to become rights holders enacting rights for themselves. Correspondingly, Optional Protocol three of the UNCRC allows children to complain directly to the UN Committee on the Rights of the Child if their rights have been violated with the Committee having powers to investigate serious or systemic violations of children’s rights (UNICEF, 2021a). However, the UK have failed to sign up to this protocol citing in their eighth report on compliance with the UNCRC that they currently had no plans to agree Optional Protocol 3 (Joint Committee on Human Rights, 2015). Various third sector organisations (CRAE, 2021) have called upon the UK government to sign up to this protocol with the question being asked: ‘If rights can’t be enforced, are they really rights?’ (Amnesty International, 2021), a question which arguably underpins much of the analysis of discourse throughout this thesis, where policy and practices continue to maintain the subjugated status of children.

**Legislative Underpinnings**

Nevertheless, key legislation, such as the Children Act 1989, familiar to most practitioners entering the children and young people’s workforce, set out significant changes regarding the welfare of children, alongside viewing children as having rights of their own (ACDS, 2019). Central is the requirement to give due consideration to the wishes and feelings of children, indicative of the wider reaching effects of the UNCRC (James, 2008). The later Children Act 2004 strengthened the accountability of these rights with the appointment of a Director of Children’s Services – a single point of contact accountable for the outcomes of children and young people (ADCS, 2019), who more recently, alongside the Lead Member10 of Children’s Services, were issued with statutory guidance to consider the UNCRC (DfE, 2013). Other measures include establishing the Office of the Children’s Commissioner for England (Children Act 2004).

The UNCRC also intersects with UK equalities legislation. For instance, Article 2 of the UNCRC outlines a child’s right not to be discriminated against stating:

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

10 Elected member of Local Government.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.

The UNCRC outlines a clear commitment to protecting children against discrimination. The Equality Act 2010 comprehensively outlines in one single legal framework, all aspects of discrimination law which applies to the UK. The Equality Act 2010 covers a series of protected characteristics; age, sex, race, disability, religion or belief, sexual orientation, gender reassignment, pregnancy or maternity. Thus, the Equality Act 2010 goes some way to realising a child’s right to be protected against discrimination. Nevertheless, the Office of the Children’s Commissioner for England (Children’s Commissioner, 2012) states that the commitment to protect children from discrimination is not restricted to the protected characteristics in the Equality Act 2010, but includes the additional characteristics and vulnerabilities specific to children as specified in Article 2 of the UNCRC. For instance, the Children’s Commissioner notes that children and young people experience discrimination on the basis that they are children and young people who, different to adults, do not always possess the power to make changes for themselves (ibid). Crucially, the Equality Act 2010 does not apply age discrimination to children (Flack, 2014), with arguments suggesting that the Equality Act 2010 does not protect children from disadvantaged backgrounds (Hansard, 2020).

More recently, and directly relevant to the context of this thesis and pertinent to the practice of EPs, are reforms via the Children and Families Act 2014 (hereafter CFA), which largely refers only to England, though sought to strengthen the ‘UK’s’ commitment to the UNCRC. These reforms espoused aims to improve provision for certain groups of vulnerable children including those with SEND, children who have been adopted or are in care, those affected by the family court process, and ensuring flexible working for families (House of Lords and House of Commons, 2013). The CFA reformed the role of the Office of the Children’s Commissioner for England, extending its powers to have a specific focus on promoting and protecting the rights of children and to bring issues of rights to the attention of the government, ensuring there are the necessary advocacy and complaints procedures available for certain groups of children and overseeing the general implementation of the UNCRC (Children Act 2004). These developments were seen to be integral to the government strengthening their implementation of the UNCRC as it ‘enhances the UK’s implementation of some of the relevant rights of children and young people protected by these Conventions’ (House of Lords and House of Commons, 2013; p. 17) [emphasis added].

Hence, the CFA sought to strengthen the rights of some of the most vulnerable children and young people in England, having particular relevance for children and young people with SEND. The CFA introduced a number of new measures including Education, Health and Care Plans (EHCPs), personal budgets for families, the
requirement for LAs to publish a ‘local offer’ detailing the type of provision available for children and young people with SEND in their area and an extension of support for SEN for young people up to the age of 25. Overall, the CFA is said to have significantly strengthened the rights of children and young people to be involved in decisions and planning LAs make about their education (Riddell, 2021).

**Special Educational Needs and Disability Code of Practice 2015**

Enactment of the changes set out in the CFA with regard to SEND, takes the form of the Special Educational Needs Code of Practice 2015 (hereafter CoP), statutory guidance on the duties, policies and processes for the support of children and young people with SEND (DfE and DfH, 2015). In being a document redistributing discourses set out in the CFA, the CoP becomes a ‘carrier’ of key policy discourse. The CoP was privileged as being ‘radical’ reform of SEND (Lehane, 2016; Norwich, 2014), discussed earlier in Chapter 2, setting out a series of ‘new rights’ for children and young people with SEND (DfE and DfH, 2015). Thus, the CoP becomes a key part of the legislative and organisational context, which supports the understanding and enactment of the UNCRC in educational psychology.

However, despite the CoP’s proposed ‘new rights’, it retains the commitment of the previous SEN Code of Practice 2001 to ensuring the inclusive education of disabled children and young people (DfES, 2001). The current CoP commits to the progressive elimination of obstacles to the learning of disabled children and young people in mainstream education, in efforts to meet obligations under Articles 7 and 24 of the United Nations Convention on the Rights of Persons with Disabilities (UN, 2006). The previous SEN Code of Practice 2001 intersected with the disaggregated discrimination policy preceding the Equality Act 2010. Previously the Special Educational Needs and Disability Act 2001 amended the Disability Discrimination Act 1995 preventing schools from discriminating against disabled children in relation to admissions and the education and services schools provide or with regard school exclusions. In the same way, the current CoP integrates important equalities legislation such as the Equality Act 2010, which in the context of SEND education, protects disabled children and young people from discrimination in education and school (DfE and DfH, 2015).

**The Current Code – Codifying Rights**

The question is posed as to whether the current CoP lives up to its promised radical change, but also the scope for it enhancing and constituting children’s rights practice in educational psychology. While the analysis in this thesis will primarily focus on EPs’ accounts, policy, as interpreted by professionals ‘are processes, even when mandated, and policy texts can be differently worked on and with’ (Braun et al., 2010; p.558). Thus, how policy texts act as a ‘surface of emergence’ and description of statements of rights in being ‘enunciative modalities’,
referring to the origin and construction of statements (Foucault, 1972) offers insight into the structures on which EPs constitute discourses of children’s rights.

The CoP specifically references the UNCRC, though is limited to commitment to Article 12 and 13, outlining how children:

have a right to receive and impart information, to express an opinion and to have that opinion taken into account in any matters affecting them from the early years. Their views should be given due weight according to their age, maturity and capability (DfE and DfH, 2015; p.20).

This reflects a somewhat restricted view of the UNCRC, not representing its intricacies (Lundy, 2007), thus establishing a weakened legislative context for EPs to draw upon.

**Categories of child and ‘new rights’**

The changes epitomised in the CoP are promoted as ‘new rights’, as set out in the CFA, implying something ‘new’ has been created that did not exist before. This positions rights not as ‘moral rights’, universally applied to all (O’Manique, 1990), but rights selected and afforded to some based on certain conditions.

Significantly, as a policy text enacting the CFA, the CoP gives new rights to young people once they reach the end of compulsory school age (the end of the academic year in which they turn 16) where LAs and organisations should work directly with a young person, where they can request their own assessment for an EHCP or make representations (DfE and DfH, 2015). This can be taken as a positive step with it affording young people real decision-making power. Nevertheless, age being used as a criteria for giving new rights produces an exclusionary discursive effect (Hook, 2001) through the separation of children from young people, constructing distinct categories of functioning governing how the members of these categories operate and are operated on. This could be read as in contravention of the UNCRC, since this provides a far more subjective response to determining the level of autonomy children have in decision making and relies on subjective judgements regarding ‘evolving capacities’. Burman (2017) proposes that dominant representations of the child and age are intrinsic to assumed and distributed cultural representations of meaning and states that the ‘trajectory of development is seen as basically uniform’ (p.69). Thus, relying on age defined categories subjugates children’s rights to participation with little recognition that the separation of entitlements based on age means ‘children’ do not receive these rights.
‘Othering’ of the child – categorisations of age

Such limiting is in operation in categorising children and young people based on age, producing a systematic othering of children within the CoP, characterised by a denial of children’s rights based on age. However, exploring discrete linguistic statements and units of discourse around participation in the CoP uncovers the discontinuities, rules of formation and relationships between the statements within the discourse (Foucault, 2002a). The enactment of child’s voice and participation requires understanding ‘the technologies through which ‘voice’ is constructed, and questions of whom and what is problematised or rendered “abnormal” in the process’ (Bragg, 2007; p.345).

With respect to how children and young people are both afforded a status of possessing rights, or remain subsequently ‘othered’ can be seen in statements which appear to advance the concept of children and young people exercising their rights through participation.

For example, the CoP states:

*Local authorities must ensure that children, their parents and young people are involved in discussions and decisions about their individual support and about local provision (p. 20).* [emphasis added]

The direction for children, their parents and young people to be part of discussions and decisions is denoted by the term ‘must’, which in UK policy specifies a statutory requirement. Yet, this is contradicted as the document progresses, with the demand to:

*ensure the child’s parents or the young person are fully included in the EHC needs assessment process from the start, are fully aware of their opportunities to offer views and information, and are consulted about the content of the plan (p.20).* [emphasis added]

In this statement the ‘child’ is removed and excluded, their contribution mediated through the role of the parents. This othering of the child could also be understood using Allan and Youdell (2017) critique of the CoP. They draw upon Deleuze and Guattari’s concept of ‘ghostings’ which they describe as the ‘actively erasing a person or thing, while creating an impression of its continued presence’ (p.74).

Such a depiction of practice offers insight into how children can be positioned. The exclusion of children from this statement positions them as objects who are operated on and assessed (recalling children being object of assessment explored in Chapter 2), rather than subjects navigating this process. Thus, illustrating what Kallio (2007) discusses as children often being positioned as ‘other’ in policy-orientated studies, which necessitates the need to ensure children should not be understood as subjugated individuals but social actors in their own right. This ‘othering’ of the child represents how Cannella (1997) describes children as ‘the
ultimate Other than the adult’ (p.36) – the adult who is mature and whose knowledge has been sanctioned and legitimised.

The increased focus on ‘voice’ is optimistic and unquestioning and is perceived to represent willingness to share power with adults (Bragg, 2007). However, this unquestioning stance does not lead us to critically evaluate the mechanisms of power sharing in operation. These contradictions highlight resistance to engage with shifting power relations that give legitimacy to speak and to be critically reflexive about how what is acknowledged as voice is constructed (ibid). Discourse constitutes and limits the spaces that children do have a say in, that is, the performativity of voice in public spheres can reduce opportunities for more discrete opportunities for decision making, for example, removing the child from the space in the policy text. Hence Horgan et al. (2017) found that there are multiple spaces for participation across institutional/private and formal/informal binaries, however, opportunities are restricted to public spheres that are adult driven and dependent on age and competence.

Special Educational Needs Code of Practice – representations of rights

Therefore, this exploration of how the UNCRC, rights more broadly, and specifically how children are positioned in relation to those rights illustrates how policy commitments and discourses have the capacity to constitute discourses and practices of rights. The review of literature in Chapter 2 illustrated how EPs have historically been subject to regulation by government legislation. Critically, as I argued earlier, in the case of the CoP, the representation of rights is limited, with Sayers (2018) arguing that an opportunity has been missed to develop an SEND model on a language of rights. Therefore, how the UNCRC is represented in policy texts pertinent to educational psychology goes some way to establishing the legislative and organisational context supporting EPs’ understanding and enactment of the UNCRC.

Educational Psychology – Professional Governance

So far I touched upon some policy discourses represented in and authorised by government mandated legislation, such as the CoP. However, EPs have their own governing professional bodies, outlining ethical and practice expectations, which as I will come to argue both reproduce and resist government discourses on children’s rights.

Currently, EPs are regulated by (or regulated by themselves to meet the requirements of) the Health Care Professions Council (HCPC) which set the standards for the education, training and practice for a range of professionals, maintain a register and address incidences where professionals do not meet the standards expected (HCPC, 2019). The HCPC, in regulating practitioners registered with them, produce a range of
standards including the Standards of Conduct, Performance and Ethics (HCPC, 2016) and Standards of Proficiency for Practitioner Psychologists (HCPC, 2015). EPs are required to meet these standards and are unable to practice without HCPC registration. EPs are also subject to the governance of a range of other organisations, including the British Psychological Society (BPS) and its Division of Educational and Child Psychology (DECP) and the Association of Educational Psychologists (AEP). The BPS, previously responsible for the registration and accreditation of EPs, is a representative body for psychology and psychologists across the UK in ensuring ethical and good practice, and in maintaining high standards across psychology (BPS, 2019). The AEP primarily acts in a trade union capacity and is an association conceived only for the profession of educational psychology alongside producing handbooks and guidance for EPs (AEP, 2019).

Children’s Rights, Ethical Codes and Professional Practice

A series of documents, including those from the HCPC and BPS, were reviewed to explore how the UNCRC was represented within EPs’ professional governance.

Health Care Professions Council

Review of the HCPC Standards of Conduct, Performance and Ethics 2016 (hereafter HCPC Standards) (HCPC, 2016) found ‘rights’ to be absent from the document. Earlier documentary analysis undertaken by Woods and Bond (2014) also identified that direct reference to the UNCRC within the preceding HCPC standards document was also missing, though argued it included implicit reference to aspects of the UNCRC in promoting equality and working for the best interests of the client, which link to the guiding principles of the UNCRC (Woods and Bond, 2014).

Similarly, analysis of the HCPC Standards 2016 identified what could be argued to be the implicit incorporation of principles inherent to the UNCRC, for example promoting practice related to supporting survival and development, maintaining health and wellbeing and enabling participation in decision making, including children’s participation. Significantly, and relevant to the subsequent analysis explored in more detail in Chapter 9, the HCPC Standards specifies that consent should be obtained from service users, which as I will argue later in the thesis could be regarded as an enactment or mechanism of service users’ participation, indicative of Article 12 of the UNCRC (UNICEF, 1989). Thus, knowledge and understanding of rights is implicitly considered through attention to consent, which is a form of participation, though the absence of explicit reference to the UNCRC simultaneously indicates an erasure of children’s rights.
British Psychological Society

More directly orientated to psychological practice is the BPS, identified by EPs as a key institution in the governance of their practice. The BPS no longer retains its authority over EPs’ remit to practice, though remains an accrediting body of undergraduate and postgraduate degrees, with potential EP trainees being required to have a BPS accredited degree to pursue doctoral training. The BPS produces a range of documents both for the wider psychology community and also specifically for EPs through its Division for Educational and Child Psychology (DECP).

British Psychological Society Code of Ethics and Conduct

A key document for practitioner psychologists is the BPS Code of Ethics and Conduct (BPS, 2018). It outlines the professional standards, ethical behaviour and attitudes all psychologists, including EPs, are expected to uphold, though is not specific to work with children and young people.

Analysis identified a reference to rights, though not directly to the UNCRC, with the BPS Code of Ethics and Conduct only committing to have ‘particular regard to people’s rights’ (BPS, 2018; p.5). The use of ‘regard’ draws parallels with the terminology used by the UK government in relation to the UNCRC, and their commitment to give ‘due consideration’ (2010, House of Lords and House of Commons; Joint committee on Human Rights) to the UNCRC in legislation and policy. The term ‘regard’ requires that there is a duty to take guidance into account with any departure to be clearly explained and justified (Hogan and Lovells, 2015). In this way the BPS are replicating potentially exclusionary structures of reduced accountability for children and young people’s rights where rights is positioned as an optional practice rather than a legal duty.

BPS Practice Guidance

The BPS Practice Guidelines (BPS, 2017) outline a more comprehensive understanding rights, referencing the UNCRC, interestingly in relation to guidance on ‘Informed consent with children and young people’, stating:

All children and young people, whatever their age or status, have a right to express their views freely and be involved in any decision-making that affects their lives, which includes judicial and administrative proceedings. (BPS, 2017; p.50)

This statement is explicitly referenced to the UNCRC in the BPS guidelines, demonstrating recognition of a child’s right express their views and participate in decision making, indicating a commitment to Article 12 of the UNCRC, countering arguments illustrating the pervasive limiting of the remit of Article 12 to only voice or views (Lundy, 2007).
Equally, the link to informed consent illustrates a more nuanced perspective of how participation can be more than establishing children’s views, encapsulating broader practices where children are asked to contribute to decisions, such as consent. In a further iteration of this, the BPS Practice Guidelines (2017) illustrate a commitment to how ‘Gillick competent’ children can provide consent even if their parents do not (p.27) eschewing reliance on age related categorisations to determine capacity to participate in decisions.

**Division of Educational and Child Psychology Practice Guidance**

Rights were most notably evident in the ‘Guidance for Educational Psychologists (EPs) when preparing reports for children and young people following the implementation of the CFA 2014’ (BPS, 2015) (hereafter Guidance), developed to provide direction to EPs in producing reports in line with the new requirements of the CoP. This document recognises how the principles of good practice for EPs are an amalgamation of a range of documentation, including that produced by the AEP Code of Professional Conduct (AEP, 2012), the BPS Code of Ethics and Conduct (BPS, 2009) and the relevant HCPC documents (HCPC, 2008; 2009) further demonstrating the interaction and diffuse governance of educational psychology.

Importantly, however, the Guidance does directly reference the UNCRC:

> Whilst EPs will always seek to work in partnership with parents, local authorities and other professionals, and include their opinions when making any recommendations, the EP has a primary duty of care to any child or young person for whom advice is requested. They will also be guided by the United Nations Convention on the Rights of the Child (UNICEF,1989). (BPS, 2015; p.5)

The explicit commitment to the UNCRC is unsurprising, with this Guidance being produced in response to the changes and commitments to ‘new rights’ in the CFA 2014, pointing to educational psychology practice being driven and shaped by governmental discourse, rather than the discourse present within broader psychological practice.

Equally, the Guidance still only advises that EPs are to ‘be guided’ by the UNCRC as if is only a practice rather than a more robust enactment where the UNCRC is a duty. Despite this, rights informed language is mobilised throughout the Guidance, for example, how EPs should ‘act in the best interests of service-users. The child or young person’s views need to be at the centre of the process’ (BPS, 2015; p.5) and the ‘voice of the child or young person needs to permeate the advice’ (BPS, 2015; p.6). These statements demonstrate an implicit commitment to the UNCRC, though paradoxically, do not incorporate the full remit of the UNCRC’s commitment to children’s views being given due weight as set out in Article 12, indicative of a limiting of Article 12 (see Lundy, 2007).
Nevertheless, implicit commitments to children’s rights, can extend beyond use of the term ‘rights’, but can also be indicated the positioning of children. Of note, is the statement of commitment to the UNCRC in the above selected extract, which indicates that EPs will work ‘in partnership with parents, LAs and other professionals’ (BPS, 2015; p.5). Children and young people have been omitted from the partnership forged by EPs, arguably a reproduction of discursive practices in the CoP explored earlier, excluding children from the discourse. This risks reinforcing the paternalistic elements of the UNCRC, which identify how the UNCRC favours and reinforces protectionist viewpoints that allow children’s views to be discounted (Cordero Arce, 2015; Lundy, 2007; Liebel (2012). The lives of adults remain privileged over that of children who continue to be prevented from participating (Liebel, 2012) as can be seen by the exclusion of children from imagined partnership.

**Developing Children’s Rights in Educational Psychology Policy**

While there is an argument that suggests that the normative and hegemonic power of the UNCRC could mitigate its full discussion in professional documentation, Lundy’s (2007) suggestion that focussing on discrete elements such as ‘voice’ dissipates the UNCRC’s remit implies that educational psychology’s governing bodies need to strengthen their commitment to the UNCRC. Consequently, the commitment to rights lacks coherence and largely relies on implicit realisations rather than conceptualising the UNCRC in its entirety, supporting Woods and Bond (2014) assertion that absence of direct reference to the UNCRC in educational psychology’s governing documentation is a barrier to progressing the UNCRC in educational psychology practice.

This view invites a Laclauian conceptualisation of discourse, specifically in relation to Laclau’s (1996) idea of the empty signifier. Laclau defines an ‘empty signifier as ‘... a signifier without a signified’ (Laclau, 1996; p.36). Laclau (1990) draws on Saussure’s definition of signifiers outlined in his Course in General Linguistics (1916), according to which a signifier is the ‘representation or mental concept signified by the signifier in an arbitrary relationship’ (Conde Soto, 2020; p.199). When a signifier moves beyond the exterior limit of a signified concept it becomes an empty signifier (Conde Soto, 2020) and thus empty signifiers become ‘emptied’ due to giving rise to a multiplicity of empty demands (MacKillop, 2018).

Taking signifiers such as ‘voice’ or ‘views’, often deployed to represent children’s rights, suggests their multiplicity of meanings result in their becoming emptied of the meaning of rights, thus moving beyond the exterior limit of the signified concept. For example, implicit links between terms perceived to be informed by
rights, such as views or voice, are neither a benign representation of their everyday meanings nor illustrative of the UNCRC. Such terms, when not explicitly linked to the UNCRC become empty signifiers of rights. Therefore, I suggest that educational psychology cannot rely on fleeting references to and particular aspects of the UNCRC that assume certain meanings. Consequently, more in depth analysis and consideration of their meaning in educational psychology practice is required.

*Moving to Rights Discourse in Practice*

Moving on from the analysis of these policy texts, the subsequent chapters will illustrate how EPs account for their understanding and enactment of the UNCRC in practice. In further exploring the tensions I have drawn attention to so far, I will now consider from the perspective of EPs.
Chapter 5 - What are Rights? Educational Psychologists’ Accounts of their Understanding of the UNCRC

A central aim of this doctoral research was to explore how EPs account for their understanding and enactment of the UNCRC. Central to consideration of the UNCRC is how EPs talk of rights – in what ways do they describe rights and situate the meaning of rights within legal and policy frameworks? Throughout this doctoral research EPs narrated a range of understandings of children’s rights and the UNCRC, drawing on their knowledge of children’s rights, their professional practice and mechanisms of governance. The below analysis will explore and focus on instances of discourse at the level of the statement, or discourse, and how they constitute a discursive formation (Foucault, 1972), which refers to group of statements that refer to the same topic or theme and produce a similar effect (Mills, 2010). Children’s rights in educational psychology can be regarded as a discursive formation which requires mapping to identify the ‘surfaces of emergence’ or signifiers of rights (Foucault, 1972) where statements differ, but refer to one and the same object are deployed. Therefore, the analysis of EP’s understanding of rights will begin with the ways in which rights are described, but also the ways EPs account for their understanding of rights as a concept in exploring the overlapping discourses of rights and relationships between them, and also the limiting of certain differences and contradictions.

Children’s Rights as Human Rights

How children’s rights are conceived is inextricably linked to the UNCRC which has been described as a ‘codification’ of rights for children (Archard, 2015; p.108-109). However, rights are not concerned only with children, but are part of a much broader set of discourses, overlapping with frameworks of human rights, which in itself depicts contested conceptualisations of what it means to be a rights holder. Contemporary human rights, similar to children’s rights, are coded through international law, such as the UN Declaration of Human Rights and the European Convention on Human Rights. These codifications of rights set out what is described as ‘equal and inalienable’ rights outlining the freedoms and entitlements applicable to all humans (UN General Assembly, 1948). Even still, these include ‘absolute’ rights, such as the right to be free from torture and ‘qualified’ rights, which are dependent on the conditions of situation, able to be taken away for the protection of others, public order, public health, national security or to ensure general welfare (Çali, 2007). Such tensions reflect historical debate underpinning conceptualisations of human rights ranging from natural law theories where rights cannot be taken away to utilitarian approaches where being good can only be evaluated in context, where rights emerge from rational choice through appraisal of the benefits and disadvantages of a direction of action (O’Byrne, 2013).
This presents the question of how human rights systems are applicable and can be drawn upon to understand children’s rights. The UNCRC is routinely depicted as human rights for children (Invernizzi & Williams, 2011), largely in contradiction to the premise of the UNCRC, which sets out how ‘childhood needs special care and assistance’ (UNICEF, 1989; p.3) separate to regular human rights frameworks. Children’s rights sits across existing tensions within the protection and participation debate where children are seen as right holders or subjects whose rights are enacted on their behalf (Fortin, 2008). This underpins how working in a child’s best interest can be understood (Zermatten, 2010), where adult views can take precedence over children’s right to have a say (Thomas and O’Kane, 1998; Tisdall, 2018). Correspondingly, those interrogating the children’s rights discourse increasingly contest the limited legal recourse for children and young people to challenge infringements to their rights (Lyon, 2007), highlighting the contradictory nature of the UNCRC (Quennerstedt et al., 2018). This directly speaks to the legislative context for the enactment of the UNCRC by EPs, who in accounting for their understanding will be required to situate children’s rights within legal and legislative frameworks, in expounding what it means to be a rights holder.

**Educational Psychologists and Rights Discourse**

Children’s rights is not a concept which has emerged detached from earlier notions of rights, but indeed were born from a belief that children needed special protection with their rights being more at risk of being infringed upon, explicating Foucault’s concern with the examination of how certain concepts lead to the production of new later concepts (Foucault, 1972), for instance the relationship between human rights frameworks and children’s rights. Thus, the UNCRC is a ‘codification’ of rights for children (Archard, 2015), and as I will come to illustrate, also invoke the deployment of signifiers of rights discourse by EPs seen to represent children’s rights.

The below extract demonstrates how one EP, Thomas, worked to understand the effects of certain discourses. Thomas, more so than other EPs, draws substantially on discourses indicative of a wider human rights discourse. Likewise, other EPs also mobilise discourses of rights indicative of particular understandings of rights as claims, entitlements and practices, all of which have particular discursive effects acting as a ‘will to truth’, with the discursive effect of renewing and producing certain discourses to the exclusion of others (Hook, 2001). The corresponding, and at times contradictory, discursive practices indicative of human rights frameworks go some way to illustrating discontinuities (Foucault, 1972), in how children’s rights and the UNCRC are understood. To explore this in the interviews, EPs were asked to narrate their understanding of the UNCRC.

In response, Thomas, an EP, situates children’s rights within wider discursive formations and states:
I think my understanding would be certainly it [UNCRC] feels like an aspirational document and it’s something that I’m becoming more and more interested in. I would say for me it’s almost a number of non-negotiables, these are rights, they are inalienable, they’re not contingent on anything, they are there and that’s it – they’re not up for discussion. When I say they’re not up for discussion I wouldn’t say you can’t discuss the merits of particular articles... the idea that they are there and that they’re not contingent on anything, they’re not dependent on the performance on the behaviour of a child, it’s their rights, same as human rights. Yea I suppose my understanding is informed by human rights are also children’s rights as well so we have a different convention for children... so I think the fact that we have children’s rights – does that say that children are different to humans because we have human rights – you know these are all sorts of things that I think about. I suppose that there might be a view that children are special and different and they might need different things so let’s do a convention of children’s rights (Thomas).

This extract was selected as it traverses a number of discourses established and dominant within children’s rights, whilst also extending to draw on broader human rights discourse. Such a comparison of discourses will hopefully illuminate the status of children’s rights and the UNCRC and how they are positioned in relation to wider rights discourses, identifying points of contradiction and discontinuity (Foucault, 1972) in how rights are understood and enacted by EPs. Therefore, in the subsequent analysis I will take aspects of Thomas’ and others’ text where they have provided accounts of their understanding of the UNCRC.

Status of Rights

Thomas uses powerful rights-based language in illustrating his understanding of children’s rights. However, there are limits to Thomas’ constitution of rights as it is formed through the power of language as opposed to juridical or claims based understandings of how rights can be enacted.

Thomas’ account of his understanding of the UNCRC relied heavily on a human rights discourse, largely driven by what Thomas describes as being how his ‘understanding is informed by human rights are also children’s rights’ drawing comparisons between the status of both. This statement has significance as rights, both child and human, represent as Campbell (2003) argues, a language of priority and ‘high normative force that demands our attention’ (p.3). The language of rights, particularly human rights, has a productive and potentially powerful effect and adds status to children’s rights (Holzscheiter, 2011a).

How children’s rights are understood has to be considered through exploring what it means to have rights. A ‘right’ as defined by Shestack (1998) is the ‘right holder being entitled to something with a correlative duty in another’ (p.203). Orend (2002) contends that there is a consensus that a right is a claim or entitlement,
defined by how a ‘right is a justified claim on someone, or on some institution, for something which one is owed’ (p.17). Hence, Thomas’ account rests more on the use of rights discourse in drawing on parallels and paradoxes between frameworks rather than, in the extract I have analysed, how children are able to claim and realise their rights. Orend (2002) continues to outline how a right-holder, when claiming a right, is establishing the entitlement for individuals or institutions to act towards them in a particular way. Indeed, Thomas does provide statements of discourse where rights are established as absolute and ‘not up for discussion’ and comes close to considering how rights are claims or entitlements wherein he identifies children’s right to education and how EPs can help with ensuring that right. Consequently, when viewing rights in this way, how rights are understood is not only in relation to whether one possess rights, but corresponding responsibility or duty on the other, as a duty bearer, to ensure the realisation of those rights.

**Power of Rights**

Therefore, in the understanding and enactment of rights by EPs it is important that the contrasting nature of these discourses continue to be examined in being seen as ‘problematising moments’ (Bacchi, 2012). The deployment of the powerful rights discourse constitutes a will to truth (Foucault, 1981; Hook, 2001), constructing an illusion that children’s rights hold the same status as human rights, but obscuring the limiting effects of children’s rights practices. Therefore, how rights are understood and defined in the context of children’s rights helps to identify the gaps, discontinuities and spaces of dispersion and diffraction (Foucault, 1972) in the enactment of the UNCRC.

**Children versus Humans**

The analysis has already begun to draw attention to how children’s rights can be compared and positioned within a human rights framework, however, understanding children’s rights arguably arises from the differentiation between child and human rights. Thomas identifies this differentiation, asking an important question *‘does that say that children are different to humans because we have human rights?’*, demonstrating consideration of how children are positioned differently to humans, connecting with existing discourses which position children’s rights as different to human rights (Freeman, 2009). Conversely, children being recognised as a different social group both made children visible whilst being inherently different to adults (Holzscheiter, 2010). This splitting off of children as ‘different to humans’ and ‘special and different’ from the wider human rights discourse, as noted by Thomas, reproduces the material reality the UNCRC which within its preamble states how ‘the United Nations has proclaimed that childhood is entitled to special care and assistance’ (UNICEF, 1989; p.3). This is representative of wider structures where institutionally and structurally certain groups and individuals are recognised as being vulnerable and at more at risk of marginalisation, reflected in
the raft of international conventions created to protect these groups. For example, the Convention on the Rights of Persons with Disabilities (CRPD) (United Nations, 2007) was created in an effort to strengthen the rights of disabled people and their inclusion in society and the Sustainable Development Goals specify that gender equality has yet to be reached (United Nations, 2015). This highlights the ongoing marginalisation of certain people and groups where the requirement for special consideration illustrates the ongoing inequality and inequity of rights for all people. This could be understood through frameworks, such as the Capability Approach (Sen and Foster, 2005; Nussbaum, 2011), which argues that well-being, justice and development need to be considered in relation to people’s capabilities to function and concern for opportunities afforded to marginalised groups to be enabled to reach their capabilities (Robeyns, 2005), through providing ‘special assistance’ to children. Conversely, this runs the risk of the ongoing colonisation or othering of certain people and groups. For instance, Narayan (1995) discusses how contemporary care discourses rightly pay attention to human need and relationships, yet often maintain colonial discourses that preserve the inferior status of the colonised, inferior or childish Other who require paternalistic guidance by their oppressors (Cannella and Viruru, 2003). These groups remain subject to oppression and ‘othered’ ensuring children and their voices remain subjugated.

**Non-negotiable and inalienable**

The aforementioned analysis then brings into question the status of rights in relation to children. In narrating his understanding of rights, Thomas, in part, takes up an absolutist and natural law position (O’Byrne, 2013) where rights are inherent and unquestioned, producing a form of children’s rights which have a certain status. Thomas states:

> for me it’s almost a number of non-negotiables, these are rights, they are inalienable, they’re not contingent on anything, they are there and that’s it – they’re not up for discussion. (Thomas)

Thomas’ description draws on language signifiers indicative of the human rights discourse. In deploying terms such as ‘inalienable’, ‘non-negotiable’ and ‘not contingent’, Thomas is setting out a particular value or belief system with regard to rights that positions children rights as universal (O’Manique, 1990), indicative of the theory of natural or moral rights where rights stem from natural law and are therefore applied universally, existing even if they do not exist as a legal (positive right) (Odysseos, 2010; Campbell, 2005). From this perspective human rights are universal on the basis of all human beings recognised as equal (Nieuwenhuys, 2008) that one possesses on the basis of being human and are ‘important’, ‘moral’ and ‘universal’ (Shestack,
Therefore, Thomas’ construction of rights portrays a universal set of rights applicable to all humans, including children, not differentiating, and as such are inalienable and non-contingent. The deployment of a human rights discourse by Thomas to frame children’s rights produces an effect wherein children’s rights are afforded more power and priority, forming a concept of children’s rights which Foucault (1972) would conceive as a dispersal of discourse underpinned by the substitution or displacement of other discursive practices.

Such an understanding of rights forms the foundation for the UNCRC, which outlines in its preamble the recognition ‘of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace’ (UNICEF, 1989; p.3) [emphasis added]. However, positioning children’s rights as human rights that are inalienable must be juxtaposed to the UK governance and policy discourse on the UNCRC, where the failure to incorporate the UNCRC into domestic law is criticised as a substantial hindrance to the UK’s full realisation of the UNCRC (CRAE, 2018), with children and young people afforded limited recourse to challenge infringements on their rights (Lyon, 2007). In this way, children’s rights are non-negotiable, but in the negative sense, where children cannot negotiate if their rights are infringed upon. Consequently, children’s rights cannot be inalienable, in contrast to the Human Rights Act 1998, which incorporates the European Convention on Human Rights into domestic UK law enabling an individual to take human rights breaches to UK courts (Equality and Human Rights Commission, 2020). Human rights can be violated, but measures are in place to address such rights violations, for example, via both the Human Rights Act 1998 and the Equality Act 2010, positioning human rights as non-negotiable or at least providing mechanisms to challenge infringements of rights. However, such steps, on the basis of the UNCRC, are not possible, identifying a discontinuity of discourse when making comparisons between rules and procedures that operate for human and children’s rights, thus illustrating the subjugated position of the UNCRC in the UK in relation to human rights.

In addressing the status of rights O’Manique (1990) draws distinctions between the existence of rights that are inalienable and universal, the recognition and acceptance of rights and the exercise of rights. I would argue that on this basis children’s rights would be evaluated on how children are able to exercise such rights and the mechanisms available to have recourse to challenge violations of such rights in determining if children’s rights are realised.

Therefore, rights in their current form could be said to represent what Odysseos (2010) identifies as a ‘transitional kind of subjectivity’ (p.758) where children become a ‘rights holder in waiting’ where the subject of moral rights waits until legal mechanisms are put in place to address emerging areas of rights thus transforming moral rights into legal rights (Odysseos, 2010; p.758). However, rights therefore become reliant
on cultural and societal assumptions and interpretations guided by moral claims and dominant narratives, such as the primary consideration of best interests. For instance, the UNCRC recognises the progressive realisation of rights where a right may be superseded by material conditions (UNICEF, 1989). Children may be denied a human right until steps are taken to address the humanitarian concerns. This somewhat supports arguments that assert that human rights should be restricted to ‘first generation’ rights such as liberty or freedom from violence excluding economic or social claims where rights that are unattainable are not positioned as rights (Sen, 2007). Children then risk always being subject to being a ‘rights holder in waiting’ rather than a rights holder.

**Aspirational or Expectation**

The idea of a ‘rights holder in waiting’ relates to the conceptualisation of rights as being aspirational, another discourse deployed by Thomas.

Thomas stated:

*I think my understanding would be certainly it feels like an aspirational document and it’s something that I’m becoming more and more interested in. I would say for me it’s almost a number of non-negotiables, these are rights, they are inalienable, they’re not contingent on anything, they are there and that’s it – they’re not up for discussion.*  

(Thomas)

In his account, Thomas shifts between opposing positions in accounting for his understanding of rights, moving from positioning rights as ‘aspirational’ to being ‘non-negotiable’ and ‘inalienable’.

This uncertainty is representative of a discontinuity within the discourse. Taking the first section of Thomas’ extract where the deployment of a discourse of human rights is preceded with a softer and less absolute form of rights. Thomas initially claims that the UNCRC ‘feels like an aspirational document’, positioning the document as something to progress towards and achieve, countering both moral and legalistic discourses which imply rights are non-negotiable and underpinned by juridical consequences. Thomas immediately counters his own claim by moving to a more absolute position when referring to rights. This uncertainty reflects how rights are a ‘chameleon-like term’ as described by Sherstack (1998; p.203). The idea of rights being ‘chameleon-like’ could be somewhat grounded in the uncertainty around the underlying premise surrounding the status of rights.

Rights positioned as aspirational is far removed from inalienable rights and suggests a discourse grounded in capacity and motivation. Aspirational can be defined as the ‘action of aspiring; steadfast desire or longing for
something above one’ (Oxford English Dictionary, 2020) or ‘showing that you want to have more money and a higher social position than you now have’ (Cambridge Dictionary, 2020). Therefore, rights being aspirational positions them as something to reach and strive towards rather than inalienable as Thomas proclaims. However, correspondingly aspirational does imply a desire for something to improve which does align with rights as progressive. I would argue a position of inalienable rights may face less resistance, but is incongruous with the development of rights-informed frameworks where the development of the UNCRC is underpinned by a desire for transformation of children’s lives. Indeed, the UNCRC was born during nascent changes to the inclusion of children and young people in decision making and represents the beginnings of a shift in common world perspectives (Percy-Smith and Thomas, 2010; Tisdall & Punch, 2012), therefore, locating children’s rights as aspirational.

Nevertheless, rights as aspiration clears the way for what Sen (2007) describes as scepticism surrounding the ethical and political interpretation of human rights. The idea of progressive and aspirational rights is recognised within UNCRC General Comments No. 5 on implementation which ‘reflects a realistic acceptance that lack of resources -financial and other resources - can hamper the full implementation of economic, social and cultural rights in some States; this introduces the concept of ‘progressive realization’ of such rights’ though countries must evidence they have drawn on all resources available to them (CRC, 2003; p.3). Therefore, aspirational rights could represent a pragmatic view of the UK, and also educational psychology’s, progress on implementing the UNCRC, demonstrating an understanding of the work yet to be done in realising rights for children in the educational psychology context.

**Expectation**

Where Thomas narrated both a discourse of aspiration alongside inalienable and non-negotiable, James positioned children’s rights differently, describing rights as an expectation.

James stated:

> there are certain expectations of how children’s rights will be recognised and respected and embedded within the convention that the UK signed up to. (James)

Rights are initially positioned by James as an ‘expectation’, a term defined as the action of anticipating or foreseeing something or the strong belief that something will happen (Oxford English Dictionary, 2020). Rights positioned as an expectation rather than an aspiration affords greater status to the UNCRC and aligns with the idea of inalienable rights.
James deploys a range of discourses that make up the wider discursive formation of children’s rights, for example ‘how children’s rights will be recognised and respected’. The idea of rights being respected is a discourse common within United Nations discourses, for example, their ‘Rights Respecting Schools’ programme (UNICEF, 2021). However, in saying ‘recognised’ and ‘respected’, James falls short of fully appreciating the rights of children and young people, though accurately indicates the absence of the juridical power of the UNCRC with respect being akin to giving ‘due regard’ to the UNCRC. This reflects how the UK has indicated its commitment to the UNCRC (Joint Committee on Human Rights, 2010; CRC, 2016). James, dissimilar to Thomas, does not draw on the human rights discourse in positioning children’s rights as corresponding to natural right theories of human rights being universal and inalienable. James and Thomas’ divergent accounts traverse the differing statuses of rights, illustrating forms of division and systems of dispersion (Foucault, 1972) within the formation of the discourse of children’s rights in EPs’ accounts, particularly if this is to be situated within wider understandings of rights structures, which oscillate between clear legalistic frameworks and practices resting on ethical judgements.

These divergent views regarding rights move beyond a system of representation of child and human rights but are characteristic of the social and political context. The use of aspiration and expectation within the discourse of children’s rights reflects shifts in policy discourses that have seen a transition from welfarism to neoliberal politics in the shaping of UK policy. The idea of the aspirational citizen is seen as a rejection of expectations of welfarism (Raco, 2009), implying a possible rejection of the expectation of rights afforded to citizens through government. Citizens were afforded certain security through state support during hardship under institutions such as the National Health Service and the benefits system (Giddens, 2013). However, the system of welfare has been rolled back in the neoliberal era in favour of a more aspirational and responsible citizen wherein ‘the emergence of an aspirational agenda represents both an alibi for its ineffectiveness and a prescriptive blueprint for subsequent policy interventions’ (Raco, 2009; p.443). As such, an aspirational discourse within children’s rights deflects the responsibility of rights from governance and the institution to the individualising practices of EPs, thus offering rights a reduced status within policy discourse. By positioning rights as aspirational the government’s role in achieving rights is displaced in favour of neoliberal agendas, thus representing the ‘rolling back’ of children’s rights and thus the government being identified as having a duty to uphold and realise children’s rights.

**Children’s Rights and Evolving Capacities (Positioning of Rights)**

Throughout the analysis I have discussed how EPs have deployed the language of human rights in narrating the status of rights and their power in underpinning entitlements and duties. So far, rights have been
positioned as, inalienable, non-negotiable, aspirational and as an expectation. Now the analysis will progress to exploring how consideration of rights are constituted through perspectives on children’s capacities.

Earlier, Thomas drew comparisons between child and human rights frameworks using language common in the rights discourse. However, he also highlighted the particular discontinuity in the child rights discourse, where rights remain constructed through discourses of capacity.

Thomas asserts:

When I say they’re not up for discussion I wouldn’t say you can’t discuss the merits of particular Articles... the idea that they are there and that they’re not contingent on anything, they’re not dependent on the performance or the behaviour of a child, it’s their rights, same as human rights.

(Thomas)

In the above account, Thomas repeated his assertion that children’s rights are ‘not up for discussion’, reiterating and deploying discourses of inalienability and universality. However, Thomas adds a caveat of ‘I wouldn’t say you can’t discuss the merits of particular Articles’. This could point to how certain UNCRC Articles may connect with certain aspects of professional responsibilities, for example the right to education in Article 28 and 29, the core practice of EPs, illustrating what could be said to be the material reality of the UNCRC where certain aspects of rights connect align with professional responsibilities.

The UN Committee on the Rights of the Child suggests there is no hierarchy of rights (General Comment 5; 2003), which aligns with universal rights theories where rights are applicable to all (O’Manique, 1990). However, this fails to acknowledge the material reality of upholding all UNCRC Articles and the intricacies of practice where professional and ethical decisions require a complex balancing of concerns, probably most notable in the social work profession where evaluations of risk will be prioritised over all else. This is most evident in a report by the UK’s Joint Committee on Human Rights on the UK’s compliance with the UNCRC identifies how best interests must be the ‘primary consideration’ (Joint Committee on Human Rights, 2015) in line with what is outlined in the UNCRC (UNICEF, 1989), suggesting that particular ‘merit’ or primacy is being given to the best interest article. Indeed, making decisions in a child’s best interest is not a position that can be contested and hence constitutes a common sense discourse or construction of truth (Hall, 2010).

Equally, this corresponds with central tensions within the UNCRC where rights are contingent on certain conditions where Article 12 balances how a child ‘who is capable of forming his or her own views’ can express those views where they will ‘being given due weight in accordance with the age and maturity of the child’ (UNICEF, 1989), with this intersection of children’s characteristics mediating their realisation of children’s rights widely written about (Gillett-Swan and van Leent, 2019; James, 2007; Lundy, 2007; Daly, 2018). Views
being given ‘due weight’ then becomes dependent on the child’s age and maturity, countering Thomas’ claim that rights are ‘not contingent on anything, they’re not dependent on the performance on the behaviour of a child, it’s their rights, same as human rights’. This particular framing of children’s rights epitomises a certain ideological view and common sense understanding of rights as inalienable. Analysis of this requires a ‘detaching the power of truth from the forms of hegemony’ (Michel Foucault, 1991b), as it is at odds with the UNCRC and the reliance of Article 12 on capability and maturity or ‘the performance’ of a child which allows for the privileging of some rights over others. This discourse then operates as a system of exclusion as the dominance of promoting a child’s best interest over the inclusion of their views in decision making fails to account for the multitude of discursive techniques that subjugate efforts to take account of children’s voices.

Thomas’ attention to ‘performance’ brings into blunt view the macro and micro effects of the mediating effects on rights. Thomas is arguing that rights are not dependent on performance, however, rights theorist, Dworkin (2009) notably referred to rights as ‘trumps’ where a right beats all other claims. This stance has been viewed as a statement of absolutism with Dworkin maintaining that rights trump all else when everything is equal, hence, rights claims may be outweighed in the face of a social or national disaster. This means that competing social goals cannot supercede a rights claim in everyday life (Orend, 2002). The ‘The Right and the Good’ by David Ross outlines how rights act as the prima facie case for moral reasons for action but also can be overridden due to other considerations (Ross, 1930) with rights established not only as legal rights but also moral rights (Campbell, 2006). This indicates rights can be ‘overridden’ as a result of other concerns, for example, a child’s best interest, (Tisdall, 2018) establishing a hierarchy of rights. This is not to argue against hierarchies existing, as this appears inevitable within current societal conditions, it is the subjugation of children’s views as a result of psychologised interpretations of behaviour and performance. As Roche (1999) pointed out women were not afforded rights as they were once seen as too emotional and irrational but still went on to fight for their citizenship and belonging. This highlights how macro perspectives on rights filter down to the micro level where rights are constructed through the individual ‘performance’ of children. Considering Dworkin’s (2009) claim that this is possible when all else is equal, the mediating factors of the social and political context and children’s individual performance on children’s rights infringements become inevitable. Nevertheless, the women’s rights movement highlights the progressive nature of rights and the need for rights informed discourse in addressing social justice concerns.

Status in Educational Psychology Practice - Knowledge, commitment and understanding
So far I have identified how discourses on the status of rights are constituted within accounts of EPs’ understanding and enactment of the UNCRC, illustrating how EPs have constituted the UNCRC and children’s rights in relation to wider human rights discourse. Now I will explore the how EPs have narrated their knowledge of the UNCRC, particularly in relation to their practice, their role as an UNCRC duty bearer and the ways in which EPs considered the specific status of the UNCRC in relation to educational psychology practice.

**Knowledge of UNCRC – positioning it in practice**

In outlining his understanding and knowledge of the UNCRC James stated:

> My understanding is that there is – there has been a convention which Britain, England joined I don’t know when – late 90s. Certainly before I trained, which was in 2005. (James)

James situated the UNCRC within the historical context of the late 1990s, which coincides with when the UNCRC came into prominence, ratified by the UK in 1991 (Joint Committee on Human Rights, 2010), seeing an established discourse of rights enter UK policy making and practice (Reynaert et al., 2012). Recalling the timeframe of the 1990s is indicative of other societal shifts regarding the status of children to more autonomous individuals, explored in what was the ‘new’ sociology of childhood literature (Prout and James, 2015). Simultaneously, this highlights how long the UNCRC, now ratified for 30 years, has held a position in UK policy making, yet still arguably unknown in certain professional sectors working with children and young people.

**Situating the Convention – everyday understanding**

EPs across all accounts commented on how they situated the UNCRC in relation to their role, though generally its status was ambiguous and varied across accounts.

EPs stated:

> So my understanding – my everyday understanding of the convention – obviously I’ve had a quick look at it today... Having had a look in preparation for this and obviously there are so many articles. (Eleanor)

> but I don’t know I couldn’t off the top of my head tell you what the acts are, but I do understand that what happens is those rights get embedded within policy and process at a national level. (James)

> I’ve looked at it a few times. It’s not necessarily been core practice to look at the UNCRC. I suppose for me I’ve been quite interested in it so from what I can remember, I can’t remember much as I know...
Eleanor, James and Susan all indicate an unfamiliarity with the UNCRC, with Eleanor expressing that she had a ‘quick look’ and Susan describing she has only ‘looked at it a few times’ suggesting it is not at the forefront of their practice. Susan is explicit in stating that it has ‘not necessarily been core practice to look at the UNCRC’, bringing into stark view how obligations and knowledge of the UNCRC may be evading EPs’ practice contexts.

Correspondingly, James is unable to convey the different ‘acts’ (presumably Articles) of the UNCRC, which is an issue identified by Susan who states ‘I know there’s loads’. This recall would not necessarily be expected (nor assumed to imply lack of commitment to rights) due to the extensive number of UNCRC Articles (54) (UNICEF, 1989), though could be read as a minimising of the status of the UNCRC within EPs’ practice, consequently presenting questions regarding EPs’ understanding and knowledge of their role as a UNCRC duty bearer.

Nonetheless, what is absent can also be illustrative of an object’s status. For example, if considering the UNCRC itself, EPs did not explicitly specify its General Principles (Non-discrimination Article 2; Best interest of the child Article 3; Right to life survival and development Article 6; and Right to be heard Article 12) (UNICEF, 2021). Other aspects of the UNCRC, such as Optional Protocols were also not included in EPs’ narratives.

Rights were rarely referred to as Articles by EPs, with various abbreviations used to explicate certain Articles. For example, the right to express views was used to signify Article 12 of the UNCRC. Rights identified by EPs primarily tended to be those that could be objectively and explicitly linked to educational psychology practice. These included the ‘right to education and right to express their views’ (Eleanor), ‘a right to free speech’ (Susan), ‘the right to be consulted in provisions provided’ (James), ‘children’s best interests’ and ‘support for parents which seemed to be about supporting parents to support their child’s independence’ (Eleanor), indicative of Thomas’ assertion earlier that it is possible to discuss Articles that have particular ‘merit’.

Crucially, the right to education aligns with the core practice of EPs and their remit to provide psychological advice for those with special educational needs and disability to ensure they receive the necessary support (BPS, 2018) in working towards ensuring children and young people with special educational needs are supported in education.

Only one EP offered a more elaborated version, stating:

*Family, physical shelter, free from torture, safety, freedom being able to express your own culture and beliefs, religious beliefs and that it’s been communicated into children’s speak as well, trying to make it accessible to lots of children and young people.* (John)
John’s account incorporates a wider range of the Articles included in the UNCRC. Importantly, however, John illustrates a more interactive quality where there is a responsibility to ensure rights are communicated to children to make it accessible to them, indicative of Article 17.

All EPs mobilised discourses indicative of a child’s right to have their views heard, which is also to be discussed primarily in Chapters 6 and 7, alongside how to balance these rights with working in a child’s best interests.

*Policy Status*

EPs accounts have indicated to some degree that there is a lack of clarity regarding the status of the UNCRC. This is arguably revealing of the wider concerns regarding the UK governments weakened commitment to the UNCRC. In this way, how EPs situate the UNCRC in relation to policy points to their understanding of the legislative context for the UNCRC.

In contrast to the above accounts Joseph offered an alternative perspective stating:

> It’s [UNCRC] the root of a lot of our understanding of children’s rights in regard to the way we think about planning for their education, their contribution to decision making and their right to be informed about what’s happening to them so we have always used it as a reference point and shown how it underlies the legislation and then shown how that is enacted in SEN [sic] code of practice and then used that to demonstrate the kinds of things that people need to be having regard to it so the having the ideals and the principles and then use it as a structure to get to what we want people to do (Joseph).

Joseph outlines how the UNCRC is at the ‘root’ of ‘our’, assuming EPs’, understanding. Joseph, in a similar way to other EPs, skirts around the different Articles, though does clearly specify how the UNCRC is a ‘reference’ point underpinning legislation. Usefully, Joseph links the UNCRC to the CoP illustrating some knowledge of the UK’s commitments to the UNCRC via legislation and policy. Joseph is not the only EP to identify policy as a key driver in situating the UNCRC, with James also stating how ‘rights get embedded within policy and process at a national level’, though does not provide the specifics of how this framework is indicative of knowledge of the UK government’s has committed to uphold the UNCRC through policy and legislation (Joint Committee of Human Rights, 2010).

*Local Authorities and Children’s Rights*

How EPs accounted for the status of the UNCRC in LAs was more explicit.
Several EPs accounted for how they perceived LAs to position children’s rights. For example, an EP stated:

_I don’t think it’s [UNCRC] particularly well embedded either in general or the one [LA] in which I work, as I get to visit others when visiting trainees on practice. My impression is that it’s not particularly well embedded in general in LAs... Yea it’s a bit add on rather than integral._ (Eleanor)

And:

_I don’t have any experience of it in a LA. Ok so that’s not fair. You can extrapolate from, I don’t think I have experience of it specifically at all apart from in a sort of vague – oh of course that’s a child’s right to be heard._ (Thomas)

These two accounts are indicative of an overall view that the UNCRC is not a priority in LAs. This, both illustrates how EPs understand the requirement for the UNCRC to have status within LAs, but also pointing to EPs being reliant on an institutionally weakened framework of children’s rights.

**UNCRC Duty Bearers**

How EPs understand the UNCRC in relation to their practice, and their legislative and organisational context, has direct relevance on their roles as UNCRC duty bearers – those that are responsible for ensuring the rights of children (Cornwall & Nyamu-Musembi, 2004; Cowden, 2012; Blanchet-Cohen and Bedeaux, 2014). Reference to the term ‘duty-bearer’ was not referenced by EPs, thus the analysis here is more concerned with its absence in further exploring the status of the UNCRC in EPs’ accounts. EPs have demonstrated knowledge and commitment to the UNCRC, but also highlighted the institutional constraints where children’s rights are not on the agenda.

EPs demonstrated how the UNCRC is something ‘I’m becoming more and more interested in’ (Thomas). However, the use of ‘I’ is significant if this is to be considered in the context of how EPs are navigating a series of institutional practices, which may regulate how they enact the UNCRC. Across EPs’ accounts there was a lack of specificity of who was responsible for the UNCRC, with James identifying the need for ‘all people’ to ‘recognise children’s rights’, which indicates a more dispersed practice wherein the UNCRC is incorporated into multiple policies governing work with children and young people, thus diluting the line of governance and accountability for upholding rights. This could be read as reflecting the neoliberal roll back (Pick and Ticknell, 2002), mentioned earlier with regard to tensions between aspirational and expected rights and the government’s influence in upholding children’s rights.
This lack of government responsibility reflects a discourse of the neoliberal responsible citizen where civic society arose from an ethic of mutual responsibility or duty (Raco, 2000). Thus, the individualisation of the realisation of children’s rights represents a policy technology of the neoliberal project in the promotion of disaggregated socioeconomic activities, argued to have resulted in the redistribution of risks and rewards throughout society where risk is no longer collective and state led, but the responsibility of the individual (Raco, 2000). Thus, a single organisation or institutional body cannot be named as responsible for upholding children’s rights and therefore ‘all people’ are responsible such that, arguably, no one is accountable. This recalls Foucault’s notion of governmentality wherein the purpose of government is the development of instruments and techniques that form an ensemble of institutions, procedures, analyses and reflections in the distribution of power (Foucault 1979; p.62). This, therefore, invites a question regarding the status of the UNCRC within educational psychology practice bringing into stark relief how EPs envision their place, either as individual practitioners or as a professional group in adopting the role of being an UNCRC duty bearer.

**Policy ‘fit’ and ‘bits’**

The goes some way to illustrate the production of knowledge within the organisational context of educational psychology, simultaneously further highlighting the complex legislative, policy and organisational landscape of which EPs’ are part of.

In this way, this represents earlier arguments in Chapter 3, where the justification for this doctoral research was to counter implementation orientated understandings of the UNCRC and to work towards a more theorised approach to developing rights-informed practice.

The ways in which EPs themselves critiqued and interrogated the UNCRC were uncovered throughout the analysis, which will form the basis of the upcoming Chapters. Usefully, to use as an early example, Eleanor identified the intersecting nature of the UNCRC and stated:

> My every day understanding is about a children’s right to education and right to express their views. Having had a look in preparation for this and obviously there are so many Articles I’ve picked up bits and I can see where other bits fit in – the one about supporting children’s best interests and that’s supported in lots of the legislation. The one I picked out that I hadn’t previously thought about was support for parents which seemed to be about supporting parents to support their child’s independence that kind of their child’s developing independence and I think EPs do a lot of that and I hadn’t previously connected that. (Eleanor)
The above extract points to commonly debated tensions in children’s rights literature, where Eleanor states ‘I’ve picked up bits and I can see where other bits fit in’ evoking the complexity of the UNCRC. For example, the common tension in operation juxtaposes Article 12 through incorporating children and young people’s views into decision making with Article 3 working in their best interests (Warrington and Larkins, 2019). Eleanor references how ‘supporting children’s best interests’ is supported by legislation, performing knowledge of the UNCRC legislative context and the complex policy apparatus which underpins the UK response to protecting a child’s best interest (Arnott, 2008; James, 2008). Eleanor’s extract reinforces how practitioners are likely attracted to Articles which reflect characteristics of their professional remit, such as a children’s right to education and the right to express their views, also demonstrating the dominance of Article 12. This is not unsurprising as UNICEF (2019) themselves present Article 12 as one of the four ‘General Principles’, however, the reliance on Article 12 has the effect of excluding other Articles of the UNCRC and the complexity of how the different Articles ‘fit’ together.

The way Eleanor has identified how she has ‘picked up bits’ connecting ‘where other bits fit in’ as a result of ‘so many articles’ indicates the far reaching remit of the UNCRC and its 54 Articles. However, Eleanor’s description also accurately highlights how its disaggregated nature is not necessarily fully appreciated. Eleanor’s practice of seeing how ‘other bits fit in’ both positions certain Articles as dominant, such as expressing views and the right to education, and others as being ‘fit in’ rather than fitting together. This could suggest a hierarchy of Articles, and hence rights, where some are less known and understood countering obligations to uphold the entirety of UNCRC.

**Parental Rights**

Eleanor describes another UNCRC Article that has relevance for her and her professional role as an EP describing:

support for parents which seemed to be about supporting parents to support their child’s independence that kind of their child’s developing independence and I think EPs do a lot of that and I hadn’t previously connected that. (Eleanor)

Eleanor appears to be illustrating here how the UNCRC has provided her with new knowledge connected to her role, which positions the UNCRC as a potentially powerful transformative tool where less dominant discourses are brought to the fore.

Eleanor brings into focus the tension between working in children’s best interests as promoted by their parents, carers and professionals working with them. Eleanor does not specifically reference the tension
between best interests and children’s participatory rights, however, does illustrate how she is prioritising parents over children to some extent. Supporting a child’s parents to support their child’s independence implicitly suggests working in a child’s best interests, necessary if it is assumed that strong parental or carer support is central to children and young people’s progression through life. Yet Kalio (2011) argues that the hegemonic nature of childhood represented in the UNCRC is a disciplining technique of normalisation wherein children are positioned as being in the custody of the parents. Therefore, Eleanor’s inclusion and focus on an Article of rights to support parents takes the spotlight off children realising their own rights and identifies that others, in this case parents, are to realise their rights on their behalf. While this practice has the ultimate goal of supporting children’s best interests, the question remains as to how a child’s views and ‘progressive’ realisation of their rights is enacted within this.

**Conclusion**

The focus of this chapter was not to suggest that EP practice is not grounded in the principles of the UNCRC and broader discourses of children’s rights. EPs accounted a range of aspects of the UNCRC, beginning to illustrate how the UNCRC intersects with their practice and demonstrating the ways in which they understood the UNCRC. In particular, EPs drew on Articles from the UNCRC (UNICEF, 1989) which reflected their professional remit.

Nevertheless, the UNCRC appeared to evade establishing a significant status within EPs accounts, suggesting a disconnect between the UNCRC and practice. In this way the UNCRC does remain aspirational, being perceived to be a document that is optional and idealistic.

However, absent from EPs accounts were expressions of the status of the UNCRC in relation to educational psychology and their role, with the focus centred on describing the status of rights rather than the status of EPs as duty-bearers. Therefore, in developing UNCRC enactment work is required around the status of the UNCRC within EP practice.

Crucially, EPs demonstrated how the UNCRC could be used to develop knowledge and reflect on how children’s rights are understood in practice. Hence, the UNCRC could be used as a tool to ask more critical questions surrounding how an EP will incorporate the divergent and sometimes competing Articles of the UNCRC, such as working in a child’s best interest, the right to education, supporting parents to develop a child’s independence, including children’s views and exercising professional judgement.
Exploring these contradictions could be a way to strengthen rights-informed practice where EPs build on their problematising of tensions between different aspects of the UNCRC. This will be explored further in Part 2 of this Chapter which will move to analysing the contradictions and discontinuities in practice.

Chapter 5 – Part 2
Swampy Lowlands of Practice: Children’s Rights and its dilemmas

The Chapter so far has drawn attention to the different aspects of the UNCRC EPs are drawn to and how these rights contradict, overlap and intersect. The remainder of the Chapter will further explore the practice challenges EPs can face navigating ensuring a child’s best interests and their right to have say, particularly within the balancing of children’s rights and needs. Consequently, leading Thomas, whose text I will analyse, who described these tensions as ‘the swampy lowlands of practice’, with EPs ‘navigating those sort of waters’.

In analysing the selected text I aim to interrogate particular statements of discourse that constitute the broader discursive formation of children’s rights in educational psychology. This requires paying closer attention to particular statements and how they both are constituted and constitute discourse, for example, how perceptions of children’s needs may outweigh children’s rights. My aim is not to reach a conclusion on how to incorporate discourses of needs or rights in practice but to develop alternative understandings of the needs and rights discourse.

The text analysed is from an account by Thomas where he describes a scenario in which how needs are understood impacts on a child’s education, drawing particular attention to how rights compete and the ethical dilemmas associated with this. Thomas states:

_I knew that because there was a lack of understanding about his needs, he was not getting an education appropriate to him and I’ve on the one hand I’ve got the right to consent to be involved for me to work with him and on the other hand I’ve got this competing right to an education, knowing that it’s not happening right now because the school don’t know what his needs are and knowing that if we work together I’ll be able to help school understand his needs and provide him with an education. Yes those rights do compete and it is about in the moment, the swampy lowlands of practice, what do you do, it is an ethical dilemma and it wouldn’t be an ethical dilemma if there was an easy answer and so navigating those sort of waters is part and parcel of daily practice definitely._ (Thomas)

Introducing the Swampy Lowlands of Practice
The extract above concludes with Thomas likening the ‘ethical dilemma’ of competing rights to the ‘swampy lowlands of practice’. This is seemingly an apt and useful metaphor to describe the complex discursive formation of children’s rights practice within educational psychology where how to enact rights is murky and unclear. Thomas presents how ‘navigating those sort of waters’ is part of practice.

The term ‘swampy lowlands’ is a conceptualisation of reflective practice by Donald Schön (2017), depicting a complex landscape of professional practice where there is a high, hard ground of manageable problems where solutions arise from research-based theory and technical problem solving. By contrast, the problems down in the swampy lowlands are messy and complicated with no obvious technical solution, thus requiring non-rigorous but skilled problem identification and evaluation. This, according to (Schön, 2017) represents much of what the skilled and competent practitioner does and suggests that practitioners are met with a choice to stay on the high ground with comparatively non-essential problems or move down into the swamp of critical problems and inquiry.

**Children’s Rights as Competing Rights**

Thomas’ account highlights the challenges to realising the UNCRC, largely eschewing arguments that simplify rights enactment, for example General Comment No. 5 (UN Committee on the Rights of the Child, 2003) promotes that there is no hierarchy of rights. Thomas concludes there is no ‘easy answer’ drawing attention to existing debate within children’s rights, identifying how managing ‘competing’ rights is an ethical dilemma, noting how certain rights are at risk in upholding others, demonstrating a recognition of challenges to rights being universally enacted. Thomas does not draw explicitly on arguments from the children’s rights literature, but his position reflects debate a more critically questioning how rights are positioned in opposition to one another, similar to what (Reynaert, Vandevelde, et al., 2012) proposes in interrogating the underlying assumptions arising from particular interpretations of children’s rights. Thus, Thomas’ recognition of the ethical and practice complexities goes some way to moving on from what is discussed by (Quennerstedt, 2013a) as a focus on implementation and monitoring to maintaining a critique of the meaning of children’s rights.

**Rights, Needs and Education**

In attending to the ‘swampy lowland’ Thomas considers how certain needs are balanced with rights. The extract begins by drawing significantly on a discourse of needs (in contrast to earlier accounts of human rights). Thomas outlines how ‘there was a lack of understanding about his [child] needs, he was not getting an education appropriate to him’, outlining how the understanding of need influences the right to education,
forging a link between how understandings of children’s rights are constituted by perceptions of children’s needs.

The focus on need could be argued to partly arise from policy underpinning the everyday practice of EPs, which has its main function in assessing the ‘needs’ of children and young people thought to have SEND (DfE and DfH, 2015). EPs work with schools and education providers in ensuring children and young people have appropriate support in relation to their SEND (BPS, 2018). The EP role, regardless of whether it is partly or fully traded, or even if practicing privately, forms part of the complex fabric of children’s services in England (see Farrell et al., 2006) with ‘needs’ part of the everyday language of many social workers, teachers, policy makers and parents (Woodhead, 2009). How needs are constructed is central to contemporary public concern (Woodhead, 2009) with state welfare services for vulnerable children being determined by interpretations of need (Axford, 2008). Thus, educational psychology is subject to LA and wider government discourse in terms of how practice is shaped by constructions of children’s needs.

That is not to say that needs should not be constitutive of rights. Children’s rights have grown from interpretations of children’s needs with Barbara Bennett Woodhouse (1994), in ‘Out of Children’s Needs, Children’s Rights: The Child’s Voice in Defining the Family’ identifying how certain rights arise from defining what children need. According to Woodhouse (1994), child rights advocates at the beginning of the last century identified that children had certain developmental needs that transformed into positive rights, such as the right to recreation, education and protection, setting out public responsibility to create environments favourable to the development, growth and autonomy of children.

Therefore, perspectives on children’s needs regularly constitute how rights are understood. For example, the right to education has secured its status, being included across a range of human rights texts. The UN Convention on the Rights of Persons with Disabilities (UN, 2006) sets out the education rights of disabled children, alongside the UNCRC, which focuses on how children are supported to access and receive education as set out in Articles 28 and 29 (UNICEF, 1989). The right to education is complemented by Article 32 which stipulates a child’s right to be protected against economic exploitation and forms of labour that may hamper a child’s education, or is harmful to their ‘health or physical, mental, spiritual, moral or social development’ (UNICEF, 1989), therefore, adding to the protective architecture to enable a child’s education. Similarly, Robeyns (2006) discusses how education, and ensuring an individual’s right to education, is ‘instrumentally important for the expansion of other capabilities’ (p.78). Education then is not only a human right but is also an important mechanism to the broader realisation of other rights (Grover, 2002; Swadener et al., 2013), such as the realisation of children’s citizenship (Howe and Covell, 2005). In this sense, education is firmly positioned as both a right and a need wherein education enables protection and development and as such this is one
explanatory factor for why EPs may prioritise education over other rights, indicating how rights are prioritised under certain conditions.

**Constructions of Need**

Nevertheless, Woodhead (2009) argues that far from the discourse of ‘needs’ having a benign goal, it conceals and condenses certain empirical and evaluative claims that are an amalgamation of the knowledge and values of the author, reader, policy maker, social worker, and in the case of this doctoral research, the EP. Thus, children’s needs are a socially constructed concept mediated by professional practice and discourses. The relationship between children’s needs and rights is grounded in normative constructions of childhood informed through psychological and sociological models of child development (Mayall, 2006; Woodhead, 2009; Woodhouse, 1994) where what is considered normal mental and physical development follows a particular trajectory within early childhood (Burman, 2017). More recent sociological constructions of childhood challenge those assumptions (Prout and James, 2015) but arguably, as can be seen in Thomas’ account, still inform the construction and perception of needs and how rights are enacted in relation to this.

**Rights, Needs and the Psy-Complex**

Such knowledges are grounded in the psy-complex professions (Parker, 1997; Rose, 1985), constituting particular notions of childhood. Educational psychology, as one of the psy-disciplines, is subject to practice that constitutes the ‘psy-complex’ (Rose, 1985). This is ‘an intricate network of theories and practices, which govern how far we may make and remake mind and behaviour in accordance with the ways in which emotional ‘deviance’ should be comprehended and cured’ (Parker, 1997; p.4). The psy-complex can be understood as a:

Complex of discourses, practices, agents and techniques, deployed within schools, clinics, the judicial and penal processes.... – which provided the basis for the generalisation and development of ‘applied’ and ‘clinical’ psychology during and after the Second World War. For it had become possible to think scientifically about the mental capacities and attributes of human individuals, to understand their conduct in these terms, to conceive of their problems and potentials in terms of these psychological capacities, and to construct techniques of regulation and reformation with reference to this psychological domain. (Rose, 1985; p.9)
Therefore, this dispersed network of knowledge which constitutes the psy-complex forms and constructs much of educational psychology practice and hence their formulation of children’s needs. A detailed deconstruction of the psy-complex within educational psychology is not the aim of this doctoral thesis, with the operation of the psy-complex within educational psychology discussed and analysed elsewhere (Billington, 1996; Rose, 1999; Sugarman, 2014).

Nevertheless, the psy-complex has relevance to the rights agenda within educational psychology if the focus of rights continues to be mediated by constructions of need whereby EPs have applied psychological theory and practice to the lives of children. Childhood, children and their needs, underpinned by normative understandings of development, are the most closely monitored aspects of human life justifying practices of social regulation deployed across institutions and professional practice (Rose, 1999). Thus conduct is inextricably linked to the regulatory apparatus of the state (Burman, 2008). For example, the management of SEND is a complex apparatus of government led policy alongside professional discourses of need. Indeed, practitioners of the psy-complex who contribute to social policy and welfare legislation, define children’s needs and best interests (Coppock, 2011). Consequently, judgements of what is normal and abnormal regarding the intellectual, emotional and behavioural lives of children is constructed and governed by ‘psy’ discourse and practice (Coppock, 2011) characterised by practices of supervision and surveillance in individualised mechanisms of normalisation aimed at changing behaviour, attitudes and character (Parton, 1998). Therefore, psychologically-informed technologies of practice that constitute the psy-complex shape and inform educational psychology’s construction of need take precedence and are mobilised over discourses of children’s rights.

Henceforth, constructions of ‘need’ in educational psychology are formed through the operation of the psychological complex which, subsequently, constitute an understanding of the realisation of children’s rights. The ‘new’ sociology of childhood arose from a rejection of dominant narratives of child development, favouring the social construction of childhood and respect for children’s agency, participation and rights (James & Prout, 1990; Tisdall, 2012). The risk then is that a needs based enactment of rights is illustrative of constructions of childhood that the child rights movement seeks to reject. I would argue that a conception of children’s rights grounded in protection and normative conceptualisations of children’s behaviour is reminiscent of constructions of childhood marred by developmentalism whereby age and normative ideas of physical and psychological growth (Woodhead, 2009) and globalised and universal childhoods that fail to account for the wider psychological and social context (Burman, 2017) are prioritised. Such a tension in the enactment of rights is illustrative of the common protection-participation debate within child rights literature and research (see Lundy, 2007; Tisdall, 2012; Warrington & Larkins, 2019). As such, psychological formulations of need in favour of protection take precedence over children’s participation and autonomy and therefore
strengthen the operation of a discourse that prioritises protection over participation and reinforces normative constructions of childhood that the rights movement aimed to counter.

*Position of the EP - ‘An appropriate Education’*

In interrogating how to balance needs and rights Thomas determines that the child ‘was not getting an education appropriate to him’. Such an interpretation implies Thomas has evaluated that there has been an infringement of the right to education in some way as a result of a lack of understanding of his needs.

This is an important point to focus on as issues regarding access to appropriate education for children and young people with SEND are situated within wider structural, policy and social justice concerns. The practice of EPs is in part driven by the CoP (DfE and DfH, 2015) developed in an attempt to address widespread dissatisfaction with the previous system to support SEND, largely outlined in the Lamb Report (2009). Despite this, mechanisms set out in CoP continue to encounter problems in ensuring children and young people with SEND are effectively supported in education and thus access ‘appropriate education’. For instance, media coverage (Guardian, 2019; Guardian, 2021) have identified ongoing dissatisfaction with SEN provision and support in schools and reports assessing children’s rights have identified that children with SEN are still more likely to be excluded from education (CRAE, 2018).

Thomas outlines his concern regarding the provision of ‘appropriate education’ and states:

> knowing that it’s not happening right now because the school don’t know what his needs are and knowing that if we work together I’ll be able to help school understand his needs and provide him with an education. (Thomas)

In identifying this, Thomas, is not just making a judgement about his needs but is proposing that this child is not having their right to education upheld, positioning himself as being able to address this issue.

Thomas’ positioning of his role as an EP in addressing the infringement of rights connects with the EPs’ role as duty-bearers, those with obligations to ensure and empower rights holders (children) to claim their entitlements (Save the Children, 2007). In this sense, Thomas is making attempts to fulfil his obligations as a duty bearer and challenge a child being denied the right to education. EPs work both at an individual level, as Thomas has described in helping schools understand needs or through consultation at a school level (Leadbetter, 2006). Consequently, Thomas (and the educational psychology profession more widely) will be
mobilising developmentally and psychologised constructions of needs that may perpetuate normative understandings of childhood that limit children’s agency and participation.

**Competing Rights**

In drawing attention to the tensions between needs and rights, Thomas is also bringing into view particular discursive practices regarding the operationalisation of children’s rights. In doing so Thomas has acknowledged the risk of infringing on certain rights.

Thomas addresses how rights can compete through stating:

*I’ve on the one hand I’ve got the right to consent to be involved for me to work with him and on the other hand I’ve got this competing right to an education…. Yes those rights do compete and it is about in the moment, the swampy lowlands of practice, what do you do, it is an ethical dilemma and it wouldn’t be an ethical dilemma if there was an easy answer and so navigating those sort of waters is part and parcel of daily practice definitely. (Thomas)*

In the extract Thomas is referring to the challenge of gaining direct consent to work with a child or young person, compared with mechanisms of consultation whereby EPs may work indirectly and consult about a child or young person in developing understanding of a child’s educational needs. In some respects Thomas is illustrating how, as noted earlier, certain rights ‘trump’ others (Dworkin, 1984). Various authors identify that within the UNCRC there is no intended hierarchy of rights while recognising that the convention does not address potential conflicts between their expressed wishes and what is believed to be in their best interest (Archard, 2007; Hill and Tisdall, 1997). The extensive range of Articles are intended to complement each other. However, it is argued that there was no consideration given to how the different Articles of the UNCRC were implemented, consequently placing significant responsibility on those implementing them to ensure the simultaneous enactment of different rights (Manful and McCrystal, 2010).

This will continue to present a challenge, aptly expressed through Thomas situating rights within the ‘swampy lowlands of practice’. EPs are bound to ensure a child’s best interests are of ‘primary consideration’, yet how this is determined will be subject to certain systems and rules of discourse that govern EP practice. The intersecting nature and complexity of upholding different rights illustrates how managing the tension of
prioritising certain rights could be said to be at the core of children’s rights practice. In drawing attention to these tensions, I am not attempting to argue against education being prioritised over other rights but rather how the failure to attend to a discourse where education is prioritised over rights, such as children’s views contributing to decision making, limits the realisation of the UNCRC.

I will come to explore in more detail in the subsequent chapters how these tensions exist across EPs’ practice, but can become obscured by the deployment of dominant discourses promoting understandings of rights which fail to account for their complexity. This is particularly evident in how children’s participatory rights are realised, and the dependence on discourses of participation, such as consultation, views and voice, to be explored in the upcoming chapters. Through analysis of EPs’ accounts it can be seen how EPs risk subscribing to the deployment of commonly relied upon discourses of children’s rights, but also work to interrogate the use of these discourses. Nevertheless, EPs illustrated across their accounts the ways in which they navigated these tensions and engaged with the more ‘swampy lowlands’ of practice. It is these tensions which will underpin the analysis in the remainder of this thesis.
Chapter 6 - Educational Psychology and Discourses of Participation, Views and Voice

This chapter will explore discourses of children’s participation and related discourses of children’s voice and views, which all form a central part of the understanding and enactment of the UNCRC. Previous chapters have already sought to critically analyse how the UNCRC, and including participatory discourses, are deployed through national legislation, policy and EP governing documentation. This chapter will draw on Foucauldian discourse analysis of EPs account of children’s rights and participation in their practice.

The commitment to the inclusion of children and young people’s views in engaging, planning and supporting children and young people’s education was evident in EP’s accounts, extending beyond an uncritical acceptance of the voice and views. EPs narrated examples of practice, demonstrating their struggles and problematisation of the dominant discourses of children’s voice and views in illustrating their understanding and enactment of rights in their practice. It is these tensions and struggles that I will draw attention to in highlighting the more subjugated discourses in children’s rights in an attempt to expand rights informed practice.

Understanding and Enactment of Children’s Participation in Decision Making

EPs, throughout their interviews, worked hard to unpick the different aspects of the UNCRC and their obligations to uphold children’s rights. Discourses of voice and views and other associated signifiers of children’s participatory rights dominated in the accounts by EPs, though EPs challenged their own rhetoric and that of others in making sense of the discursive regimes they deploy in upholding the rights of children and young people. The preceding chapter has already explored some of the discursive systems and rules that construct the discourse of rights within educational psychology, for example, how the discourse of need mediate how children’s rights are enacted. These were considered as ethical dilemmas in the ‘swampy lowlands’ of practice, in some cases suggesting there could be a hierarchy of rights. As I will go onto discuss, this is indicative of discourses within children’s participation, such as Hart’s Ladder of Participation (Hart, 1992), which also draws on the privileging of certain types of practice in determining children’s rights.

Throughout this chapter I will explore in more detail how EPs narrate their understanding and enactment of Article 12. While there will be a particular focus on Article 12 as an overarching guiding principle of the UNCRC (UNICEF, 2020), analysis will also explore the relationships formed to other associated participatory Articles, which include Article 13, 14, 15, 16 and 17 (Lansdown, 2011) in establishing the voice and views of children and young people. Associated guidance to the UNCRC advises that Articles are not implemented
independently but are done in conjunction with other rights (Lansdown, 2011). Article 12 is often balanced with concerns about what is in a child and young person’s best interests. However, some argue that the very premise of Article 12, which allows for judgements about including children and young people to be determined by capacity and age, paves the way for adult led decision making and the discounting of children and young people’s voice and views (Thomas and O’Kane, 1998).

Levels of Participation

There are a range of discourses available in relation to Article 12, with terms frequently mobilised including views, voice, having a say and more (see Percy-Smith, 2011; Lundy, 2007), as outlined earlier in Chapter 2. Notably, participation is often positioned within a continuum or hierarchy, often depicted by Hart’s Ladder of Participation, also drawn attention to in Chapter 2, with certain forms of participation perceived by some to be more developed than others.

In exploring participation I am going to take a number of the statements of participation mobilised by EPs in exploring the discursive formation of children’s rights, and specifically its constitutive discourse of participation. Foucauldian discourse analysis (FDA) will contribute to consideration of how they narrate their understanding and enactment of the UNCRC. EPs, in this doctoral research, did not outline the full meaning of Article 12 and instead opted for using a range of signifiers commonly used in describing children’s participation.

Consultation

As I will come to discuss, consultation is a commonly deployed signifier of children’s participation. However, its status can be seen as a limited enactment of participation, thus FDA will identify the regularities of use, but also discontinuities and ruptures in how consultation could be (or not be) an enactment of the UNCRC.

In describing consultation James states:

> So all people that engage with, interact with and care for children should recognise children’s rights so for example, the voice, the right to be consulted in provisions provided for them or things that might be asked of them. (James)

In the above extract, aside from the reference to ‘voice’, which I will explore in more detail later in this chapter, James refers to ‘the right to be consulted’, commonly associated with Article 12 and a practice that is illustrative of participatory rights.
Status of Consultation

The use of ‘consulted’ is illustrative of certain conceptualisations of children’s participation, for example, Hart’s Ladder of Participation, which depicts a range of levels of participation from ‘manipulation’ on the bottom rung rising to ‘child-initiated shared decisions with adults’ at the top of the ladder. Consultation is midway on the ‘ladder’ at rung five (Hart, 1992 – Appendix B). Criticism has been levelled at Hart’s Ladder for its hierarchical interpretation of children’s participation wherein the aim is to reach the top of the ladder with activities further down considered less than ideal, not accounting for the quality of the activity at each rung (Moules and O’Brien, 2012). This metaphor draws parallels with the ‘swampy lowlands’ metaphor (Schön, 1992) as discussed in Chapter 5. The ladder represents high level and complex forms of participation, contrasting with the less desirable lower level activity led by adults. ‘Swampy lowlands’ is an inverted depiction of the ladder where the low ground represents the more messy and complex problem solving compared to the more straightforward high ground. Hence, while the ‘swampy lowlands’ is not linear in the same way as Hart’s Ladder, both these metaphors represent a development to more complex practice using a high-low metaphor. Alternatively, Treseder (1997) provides a model that is departure from a linear portrayal of participation, which includes five different but equal degrees of participation applied in a range of contexts and circumstances wherein being ‘consulted and informed’ is one of them (Appendix C). Treseder (1997) identifies that while Hart’s Ladder is a useful metaphor it can limit participatory options. If aligning oneself with Hart’s Ladder of Participation, then being ‘consulted and informed’ is seen as a lesser participatory activity wherein Treseder’s model, consultation is one of the constitute parts of participatory processes. Nevertheless, both models illustrate how participation is constituted by a range of activities and not limited to one type of practice.

Defining Consultation

So where does this leave practices of ‘consultation’ in educational psychology as a participatory practice that aims to realise the rights of children and young people? Consultation in itself is a commonly used mechanism to consult with local people to ensure communities can influence decisions through resident surveys or comprehensive processes to identify what residents think about how local proposals and planning will impact them (Local Government Association, 2020).

Nevertheless, the phrase ‘consultation’ has significance, defined by the Cambridge Dictionary as ‘the act of exchanging information and opinions about something in order to reach a better understanding of it or to make a decision, or a meeting for this purpose’ (Cambridge Dictionary, 2019). The definition of consultation does not clarify how decisions are reached, thus, while consultation represents a more interactive process of being ‘consulted and informed’, according to Hart (1992), consultation could be said to maintain an unequal
balance of power. Thus, in using consultation methods with children and young people the power operating within their practice and what this means in terms of children and young people’s involvement in decision making should form the foundation of consultative practice.

Consultation and Educational Psychology

As discussed in Chapter 2 EPs use consultation to work more systemically and address school-wide issues (Cameron 2006; Wagner, 2000; Leadbetter 2006). The discourse of consultation is particularly relevant in the context of educational psychology who utilise mechanisms of consultation to develop systemic forms of practice (Wagner, 2000) through ecological approaches in addressing inequities across systems to achieve social change (Williams and Greenleaf, 2012). Therefore, consultation is not limited to practices and decision making with children and young people but forms a vital part of knowledge exchange in how individuals, groups or communities participate in decision making processes. Thus, these different conceptualisations of consultation warrant further exploration with regard to a practice to uphold children’s rights, particularly if said to conflict with participatory practice.

Consultation, in educational psychology, is defined as:

> Concerns are raised, and a collaborative and recursive process is initiated that combines joint exploration, assessment, intervention and review... Consultation aims to offer to schools a more useful, egalitarian, less instrumental, individualistic form of educational psychology. It de-emphasises positional authority and gate-keeping within the LEA [Local Education Authority]. (Wagner, 2000; p.11)

Wagner’s (2000) definition presents a more interactive conceptualisation of consultation than outlined by Hart (1992). Therefore, the mobilisation of the term consultation in educational psychology, it could be argued, may represent a more nuanced form of participation where children and young people can extend greater influence in decision-making processes.

The Subject of Consultation

Importantly, however, consultation may have qualitative differences dependent on the subject of the consultation. In Wagner’s (2000) definition, consultation is referring to consulting within and with schools, where EPs seek to challenge certain understandings of SEND through collaborative work in achieving broader impact with respect to improving educational provision for children and young people with SEND. What is less addressed in the literature is how consultation in educational psychology is undertaken with children and young people. Hobbs et al. (2000) form links between the EP approach to consultation with schools and using consultation with children and young people to develop greater understanding of issues and providing skills
to enable them to act on their own behalf, though recognising the power imbalance between the child or young person and the EP. In exploring this power differential Baxter and Frederickson (2005b) suggest that in upholding the UNCRC the child could shift from being the client who receives services to the ‘customer’, including the rights, expectations and choices that stem from this, somewhat reflecting how Freedland’s (2001) ‘different locations of citizenship’ (p.90). Freedland argues how the marketisation of public services has marginalised the relationship between the citizen and the government. Freedland is referring to how the transaction takes place with the ‘customer’ and certain subjects are distanced from the relationship. Subsequently, the customer/client discourse operates as an exclusionary system that obfuscates the child’s involvement and views. Hence, children risk remaining the object of the consultation while EPs and the school consult. This ambiguity around how consultation is positioned in relation to participatory processes reflects the lack of theorisation of children’s rights (Quennerstedt, 2013), illustrated by the indiscriminate use of language to describe complex practices in relation to how children and young people are involved in decision making processes.

**Developing consultation practice**

How consultation is considered in relation to other participatory practice was outlined by Eleanor who stated:

> Where do you need to gather more information or do some assessment? What are you trying to find out? What are you trying to gather information about? And then you have some sort of formulation about what’s going on and then match intervention to the formulation and I think largely how we think about participation in EP work we just consult with children but they don’t get a say in defining what the issue is or what needs to be assessed. (Eleanor)

Eleanor usefully reflects on the level of participation she perceives EPs to typically engage with. From Eleanor’s perspective, EPs ordinarily ‘just consult with children’. Utilising the term ‘just’ implies Eleanor is taking up a position where consultation is a form of lesser quality participation somewhat performing the hierarchy of participatory practice, as expressed through Hart’s Ladder (Hart, 1992).

However, I would argue that consultation should be considered in context. Lansdown (2011) suggests how different forms of participation are appropriate in different circumstances and suggests there is; consultative participation, which is adult led and initiated where children do not have control over the outcome; collaborative participation, which is still adult initiated, but premises partnership with children giving opportunity for empowerment and influence; and child-led participation where children identify issues with adults acting as facilitators while children lead the process. Similarly, Lundy (2018) argues how forms of participation lower down the ladder can still motivate children and young people into action. Lundy found
that children’s experiences of different types of participation were positive in terms of developing skills and understanding their rights, though still reported being disappointed when their views are not taken into account and do not influence change.

Nevertheless, Eleanor counters her own practice of just consulting by narrating how she consults with the child rather than about them, reflecting Lansdown’s (2011) conceptualisation of collaborative participation. In contrast, Eleanor suggests children ‘don’t get a say in defining what the issue is or what needs to be assessed’ reflecting discourses which dominate within children’s participatory practice and is indicative of Lansdown’s (2011) consultative participation. Such consultative practice could be viewed as top-down diverging from how consultation can be defined in educational psychology where Wagner (2000) identifies how consultation involves working with others as equals as a central principle. An EP’s focus is to empower the ‘problem-owner’ to develop solutions aimed at achieving change, including empowering other professionals, such as school staff, to explore concerns and identify solutions to develop more inclusive practice, improving educational outcomes for children and young people (Dennis, 2004; Leadbetter, 2006).

**Positionings in Consultation**

How EPs position themselves as leading the practice, or the one who is empowering others, is epitomised in Eleanor’s account where she makes repeated use of the word ‘you’ saying; ‘where do you’, ‘what are you trying to find out’ and ‘what are you trying to gather information about’. The use of ‘you’ positions the EP in a position of power, reflecting a one-way interaction directed by EPs with the child the object under investigation, not defining the problem, epitomising participation that is not child or young person led – the role of leader is occupied by the EP somewhat contrasting Eleanor’s use of ‘we’. This shifting from ‘you’ to ‘we’ reflects the precarious positioning of the child as subject and object. Wagner (2000) cautions that the balance of power in the practice of consultation can be one of ‘de-skilling’ for the consultee where the EP is positioned as the ‘expert’ (p.13). However, EPs regularly locate themselves in this position and identify that to be an ‘effective consultant’ (p.224) EPs are required to have certain skills and knowledge regarding educational psychology theory and practice including child development, alongside interpersonal skills to work collaboratively in sharing expertise, facilitating meetings and empowering others to reach decisions (Farrell and Woods, 2017). Nevertheless, this traversing between being the one investigating to one collaborating with the child, as illustrated by Eleanor, is indicative of tensions between best interest and children’s participation where an adult or expert professional determines need.

Therefore, the positioning of children and young people within consultation can subject them to discursive systems of exclusion (Hook, 2007), supporting Eleanor’s concern of how ‘we just consult’ or Wagner (2000)
reminding of the need to see children in the classroom, recalling the risk to children’s views being subjugated. Similarly, there is an argument for consultation empowering others practice in shifting the focus from ‘within child’ problems to developing inclusive institutions that address issues systemically (Dennis, 2000). However, consultation within participatory discourses can still be viewed as a mechanism offering a restricted participatory opportunity with children and young people still somewhat distanced and ‘othered’ in the process, not part of the process but the object of investigation.

In considering consultation as a mechanism of children’s rights, attention to the exclusionary effects should be considered in relation to the full remit of Article 12 and giving a child ‘due weight’ in decision making (Daly, 2018). Thus, any use of practices termed consultation should progress beyond the gathering of views to how those views contribute to decision making to encourage shifts beyond the child remaining the object of concern to a subject and holder of rights (Roche, 1995; Mayall, 2000; Woodhouse, 1999).

**Educational Psychology- Views and Voice**

The analysis around children’s participation so far has identified discursive formations around how EPs mobilise consultation. Operating alongside consultation in describing participation are commonly deployed discourses of children’s voice and views, which were particularly evident in EP’s accounts. EPs both privileged the terms views and voice over other participatory language, but also interrogate their use. Therefore, the analysis will explore these interrogations in how EPs use views and voice in accounting for their understanding and enactment of the UNCRC.

*The right to express their views*

The discourse of ‘views’ likely arises from the terminology used within the UNCRC which states where a child ‘forming his or her own views’ [emphasis added] forms part of Article 12 (UNICEF, 1989) (Appendix A).

EPs discussed the relevance of children’s views across all of the accounts provided for this doctoral research and discourses of views and voice dominated.

Eleanor stated:

*My every day understanding [of UNCRC] is about a children’s right to education and right to express their views.* (Eleanor)

I have discussed EPs’ general understanding of the UNCRC earlier in Chapter 5, including what Articles of the UNCRC EPs select as valuable to them. Eleanor implied the ‘right to education’ is pertinent, which is expected
given the remit of the EP role, however, the focus here is on Eleanor’s deployment of the discourse of children’s views rather than the privileging of certain Articles.

Eleanor, in the account above, narrates her understanding of the UNCRC as children having the ‘right to express their views’, deploying the term views establishes it as a central discourse in the discursive formation of children’s rights and the interconnected discourse of participation. Centrally, Eleanor replicates a particular rule of discourse endemic within children’s right stating children have ‘the right to express their views’ but not including the right for views to be given due weight in accordance with age and maturity, another iteration of a discursive rule, again recalling earlier discussions where views and voice, alongside others such as having a say and listening to children have become tantamount to children’s participation (see Percy-Smith, 2011; Lundy, 2007) reducing the meaning of Article 12.

The prioritising of children’s views aligns with how children’s rights are presented in the academic literature where participation remains a dominant discourse. Lansdown (2011) identifies how Article 12 is both a core right of the UNCRC and a general principle that enables the realisation of other rights and suggests that in making decisions on issues such as health and education a child’s views must be taken on board. Thus, positioning Article 12, as Lundy (2007) suggests, as having ‘transformative potential’ as if ‘implemented effectively, other rights fall into place naturally’ (p.940). In this way, EPs, would be expected to privilege views and voice, however in reaching its transformative possibilities and in realising the UNCRC, greater attention is needed regarding how views influence decisions, beyond relying on shorthand terms such as the right to ‘express views’.

Growing theme of voice

This chapter has focused on how understanding of Article 12 has relied on a discourse of views. I have tried to draw attention to the confines of this, but also how EPs have begun to critique some of the limiting discourses at play, for instance consultation. EPs continue to critique views and voice with Michael stating:

> With educational psychology again a sort of a growing theme has been voice and so I kind of engaged with that aspect as well, which I found interesting and I think we often pay lip service to children’s voice in the sense that we say ‘let’s get their voice’ and then do what with it? Some authors write very passionately about the violence of getting the voice and the alterity of the other so there’s a strong academic background to some of these ideas I suppose. (Michael)

> I’m talking about how voice has become increasingly important to EPs. (Michael)
Michael narrates the importance of ‘voice’ to EPs, another term used by EPs to signify the enactment of the UNCRC.

Michael refers to voice in an active sense that is ‘growing’ and has ‘become increasingly important’, suggesting that voice is a practice that is developing and yet to come, somewhat replicating Thomas’ account in Chapter 5 of rights being aspirational, yet to be achieved. This allows space for a more productive element to EPs participatory practice as it acknowledges that rights have not yet been realised but indicates that in part discourses, such as voice, retain a performative element in signalling commitment to children’s rights. However, only using voice may not reach the ‘transformative potential’ of Article 12 (Lundy, 2007).

Lip service

In further critique Michael explains that ‘we often pay lip service to children’s voice’, with paying lip service indicative of discourses attached to the discursive formation of participation, as discussed earlier in this chapter, where participation can take on many forms ranging from tokenism and manipulation to shared decision making between children and young people and adults (Hart, 1992). To pay ‘lip service’ to something or someone means ‘to say that you agree with something but do nothing to support it’ (Cambridge Dictionary online, 2020). This arguably aligns with more tokenistic forms of participation or ‘non-participation’ such as manipulation and decoration, and tokenism, defined as ‘to describe those instances in which children are apparently given a voice, but in fact have little or no choice about the subject or the style of communicating it, and little or no opportunity to formulate their own opinions’ (p.9) (Hart, 1992).

Practice indicative of less desirable and more tokenistic forms of participation is well discussed in the literature. James (2007) argues that children’s voices are often paid lip service and silenced by depictions of childhood that preserve developmental discourse and children’s incompetence as opposed to children as social actors. Such discourses are often mobilised as a response to control children’s participatory activity (Mayall, 2000). It is suggested that deeply held beliefs that underpin tokenistic forms of participation, such as developmental incompetence, age-related inequalities regarding size, skill and dependency and hierarchies within groups of children themselves continue to create barriers to participation that challenges practices of domination and inequality (Raby, 2014). Subsequently, this has led to claims of rhetoric in relation to participation rather than substantial changes to practice (Graham et al., 2017; Mannion, 2012). Thus, it is argued that institutions and policy makers often pay ‘lip service’ to involving children and young people in more democratic processes (Shemmings, 2000; Timmerman, 2009; Woodhouse, 2003) or fail to provide
complaint mechanisms for children and young people to challenge infringements to their rights (Clark, 2017), therefore, indicating that children may not be seen as rights holders able to protect their own interests.

*To ‘get their voice’*

This tendency towards tokenism is also reflected in Michael saying ‘let’s get their voice and then do what with it?’ Michael uses a rhetorical form of questioning indicating that perhaps he does not always know how children’s voices are acted upon.

Michael uses the term ‘get’, which is how you ‘obtain, buy or earn something’, ‘to receive or be given something’ or ‘to take someone or something into your possession by force’ (Cambridge Dictionary Online, 2020). ‘Get’ arguably refers to taking a child’s voice into your possession and implies a one way process of gathering up a child’s voice, where the adult professional practitioner takes possession of the child’s voice to use and disseminate, again failing to address how that voice influences decision making or establishes a more interactive process.

Following on from expressing to ‘get their voice’, Michael says to ‘then do what with it’. This is an important point for Michael to make as it speaks directly to the important, but as I am drawing attention, absent aspect of Article 12 in EPs accounts where ‘the views of the child being given due weight in accordance with the age and maturity of the child’ (Article 12; UNCRC, 1989). Michael saying ‘and then do what with it’ demonstrates knowledge of other aspects of the mechanism of establishing children’s voice and their participation, where voice needs to be acted upon. Michael indicating this may not be happening strengthens Lundy’s (2007) assertion that Article 12 is one of the most cited but misunderstood aspects of the UNCRC.

The issue of how participation is enacted and its reduction to voice and views continues to be problematic. One perspective could be that EPs and other professionals are fully aware of the full remit of Article 12 and terms such as voice and views are as Lundy (2007) describes, shorthand for the lengthy Article. Nevertheless, the reduction of Article 12 to just views limits its meaning and impact, consequently risking tokenistic practice. Hence, examination of this discourse remains integral as the later, less cited elements of Article 12 require that children’s views are given due weight. Daly (2018) identifies that there is no framework to ‘weigh’ children’s views with many not really knowing what this means. Daly (2018) continues that if children’s views are heard then often significant effort is required to reach a point where their views are accepted over the adults.

Children’s views being given ‘due weight’ were notably absent in the discourse within EPs’ accounts for this doctoral research and thus have been excluded from the discourse. This potentially exclusionary practice as wider effects than exploring the understanding and enactment of the UNCRC by EPs. The issue of children and
young people not feeling listened to or having a say on decisions is a longstanding issue. Since the advent of the UNCRC and its ratification by the UK Government, there has been a legislative and policy rhetoric that promotes children as being capable of forming and providing their views wherein the child is placed at the centre as part of a move towards the incorporation of the voice of the child in decision making (McKay, 2014). Despite this, the quality of children’s participation remains a key debate. Kilkeely et al. (2004), in research commissioned by the Northern Ireland Commissioner for Children and Young People (NICCY), established that not having influence on decisions about their lives was the most common reason given by children and young people regarding what they felt was unfair. This is despite much research setting out the positive impact of children and young people’s participation in decision making (see Kosher and Ben-Ariehe 2020). Indeed, educational psychology has a long and extensive history of promoting the inclusion of children’s views as the profession was discussing promoting children’s voice before the advent of the UNCRC in work by Gersch and Cutting (1985) on The Child’s Report. Regardless of commitments to children’s participation, issues remain. The Committee for Rights of the Child outline in their 2016 report on the UK’s progress in specifically referencing how disabled children and young people are not involved in decisions about their lives (CRC, 2016; see also Kelly and Byrne, 2014).

Therefore, it can probably be said with some confidence that there is much work to do with regard to including children and young people in decision making, particularly those with a special educational need or disability, which is of direct relevance to the EP role. Discursive practices imply a commitment to children’s participatory rights, yet are countered through discontinuities of practice (Foucault, 1972) wherein children’s views remain subjugated.

The violence of getting the voice and the alterity of the other

Michael, draws attention to further discontinuities of practice where he offers critique of voice. Referring to the ‘violence of getting the voice’ is an interesting juxtaposition of discourse, positioning voice as potentially possessing violent and limiting effects, with violence as a term being mobilised in any form evoking notions of harm.

The idea of violence of voice is primarily discussed in academic literature related to sexual violence in understanding operations of power and the silencing of certain voices and discourses (Crowe, 2015; Hlavka, 2019). A child who is not permitted their own sexual subjectivity, agency or voice to understand their experience according to their own terms, leading to the epistemic violence of their experience, their perspective being silenced (Hlavka, 2019).
The term ‘epistemic violence’ is used by Gayatri Spivak in her text ‘Can the Subaltern Speak?’ (Spivak, 1988), referring to the silencing of marginalised groups (Dotson, 2011). ‘Epistemic’ relates to knowledge or the study of knowledge (Cambridge Dictionary, 2021), hence ‘epistemic violence’ can be understood as the delegitimation of certain knowledge. When talking of colonial practices epistemic relates to the effect of ‘disappearing’ knowledge where local knowledges are discounted in the privileging of often Western epistemic practices, thus, a practice of epistemic violence is preventing a group to speak or be heard (Dotson, 2011). Such practices are maintained through the denying the voice of the Other to provide a counter-narrative where dominant discourses are reproduced across a range of settings (Malherbe et al., 2017).

Therefore, epistemic violence can refer to the silencing of marginalised groups. Michael proceeds the statement ‘violence of getting voice’, with we ‘get their voice and then do what with it?’, drawing attention to voice as a practice of silencing. This form of epistemic violence is depicted in analysis of the experiences of testimony in sexual violence cases where how the audience receives and hears information contributes to practices of epistemic violence (Dotson, 2011). Correspondingly, within educational psychology practice, children’s concerns will be constructed within practices and processes of the ‘psy-complex’ (Rose, 1985). For instance, Billington (2018) who suggests how children can be described by their problem or category constructs an ‘epistemological terrain, deploying specific concepts that are inherently psychological’ (p.5). Subsequently, children are silenced by developmental and psychologised discourses of protection and dependency with ‘experts’ situated within contradicting discourses and agendas in trying to meet diverse expectations (Motzkau, 2009). As a result, Billington (2018) argues that children risk being represented in terms of their deficit using incomplete diagnostic narratives. Thus, accounts representing children must be theoretically and empirically developed, paying close attention to the data narratives and how we speak and write about children and young people. As such, children’s voices are provided, but not received by the audience. Thereby, the voice is obtained but as Michael suggests to ‘do what with it?’, bringing into view the subjugated discourse of giving views due weight.

Voice as ‘patriarchal and hierarchical’

Another EP, Thomas also identified how ‘voice’ was limiting, but in the context of perceiving the term to invoke patriarchal and hierarchical discourses.

Thomas stated:

*I personally hate that phrase ‘the voice of the child’ – it just sounds so patriarchal and hierarchical. And it is reduced to a simple level – you’re absolutely right. It’s tokenistic in most cases. Have we asked the child what do you like – we actually have a form in the LA; what do you like, what do you dislike, what*
helps me, what am I interested in, what do I want to do when I grow up? I mean really? That’s not person-centred. We’ve just taken 5 questions that we think every child should answer. It’s just tokenistic and actually when you follow and take a statutory document for example you follow it through sometimes, sometimes you’re just left thinking like where’s the child in this at all? (Thomas)

Thomas was explicit in his rejection of the term ‘voice’. Similar to Michael, he questioned what is gained from ‘voice’ and expressed that it represents something that ‘is reduced to a simple level’, again echoing earlier discussions how ‘voice’ does not represent the full remit of Article 12. Thomas emphasises the issues with ‘voice’ stating they are ‘tokenistic’, illustrating a top-down form of participation epitomising hierarchical models of participation such has Hart’s Ladder (1992). He demonstrates his knowledge how tokenism is viewed as a lesser form of participation, classified as ‘a dirty word in children’s participation’ (Lundy, 2018; p.340).

The example provided by Thomas is of a ‘form’ they have in their LA, a common method to establish children’s views and to gather information both in relation to children and adults. Thomas highlights how this type of participation remains adult-led and top-down (Checkoway, 2013; Križ and Skivenes, 2017; Thomas, 2007) representing a method of non-participation were children are not seen as decision-makers (Križ and Skivenes, 2017). The form is used to establish or ‘get’ children’s views to feed into a statutory document, representing another one way process.

Correspondingly, Fox (2013) argues how institutional barriers create challenges for young people’s participation. Fox suggests that rhetoric around participation can be used to maintain claims and policies that have not included young people, where adults continue to be gatekeepers to young people’s inclusion through utilising formal mechanisms that maintain adult assumptions and control. The institutional context in which voices are produced is subject to the influence of adult power and authority and certain institutional contexts allow the domination of certain voices over others (Spyrou, 2011). Furthermore, the idea of ‘voice’ fails to imply the active involvement of children in a process as participating subjects but situates them as objects of adult research (James, 2007). Thomas’ example, similarly, does little to position the child as a speaking and participating subject but only as a ‘voice’ on a form.

Thomas has referred to this type of participation as ‘patriarchal and hierarchical’. Patriarchy can be defined as:

A set of social relations which has a material base and in which there are hierarchical relations between men, and solidarity among them, which enable them to control women. Patriarchy is thus the system of male oppression. (Hartmann, 1976; p.138)
Johnson (2005) identifies that a society is patriarchal when it ‘promotes male privilege by being male dominated, male identified, and male centred’ [emphasis in original] in positions of authority devising power differences through central cultural ideas being derived from males (Johnson, 2005; p.5). Patriarchy often refers to the oppressive practices of men towards women, but is said to affect people of all genders being the ‘embodiment and sustenance of unjust power’ (Cornwall, 2016; p.76). Thus, societal mechanisms of group oppression can operate alongside sexism in patriarchal structures, for example, race, religion, class and other forms of structural inequality (Becker, 1999).

Patriarchy’s relationship to children’s rights partly arises from views that the law is male dominated and within a patriarchal system (Olsen, 1992). Olsen identifies how the patriarchal family denied rights to women and children with the UNCRC being viewed as extending rights to children. However, one reading of the UNCRC is that it is still inherently male dominated wherein it addresses child military service, which tends to affect boys but does not attend to child marriage, which is often seen to affects girls. Thus, the UNCRC becomes a mechanism of control grounded in an ethic of care rather than an ethic of rights (Olsen, 1992). On the other hand, the recognition of children’s rights contests the construction of the patriarchal family that can be both a site of security or oppression and violence both between men and women and adults and children (Hallett, 2000). Children’s rights can be seen to offer a challenge to patriarchal notions of family and societal life. For instance, children seen as autonomous and agentic subjects (see Archard, 2011) can contest civilising constructions of childhood and patriarchal forms of knowledge production regarding children (Cheney, 2019).

The Imagined Child

The subjugating of children’s knowledge and voice continues to be prevalent discursive practice within the accounts of EPs.

As I have just discussed, children are still subject to patriarchal processes that limit their voice within what are seen to be participatory processes.

In the extract above Thomas stated:

*sometimes you’re just left thinking like where’s the child in this at all* (Thomas).

Thomas raised this point in response to considering effective institutional procedures, such as forms used to establish children’s views. Thomas highlighted how the child was not represented, bringing into question what it means to be representing children and their views. Thomas, in not being able to find the child (note Thomas says ‘the child’, not the child’s voice) relates somewhat to issues of representing a child’s authentic voice. James (2007), drawing on lessons from anthropology about representation, explains Clifford Geertz’ ideas
around “text positivism” and “dispersed authorship” which concerns itself with how research done with or by children, can claim to be an authentic representation of what children say and mean through the uncritical representation of children’s voices (Geertz, 1988; p.145). As James (2007) highlights, accounts of children’s views may provide an accurate record but they have still been selected by the researcher to illuminate a particular point. The author will likely add a layer of interpretation, thus the adult will maintain control over the child’s voice. Thomas is accounting his view of problems in how ‘voice’ does or does not represent the child. As such, a child’s voice represented in this way can represent a ‘regime of truth’ (Foucault, 2003) meaning how psychological and social processes are socio-historical and produced as part of systems of surveillance and control, thus the discourse represents a certain social character rather than someone else’s world (Hammersley and Atkinson, 2007). In this case it is the child’s world that cannot be, but is trying to be, represented but is constituted by a ‘regime of truth’ grounded in the EP or professional’s socio-historical context.

The example discussed so far involved Thomas’ account where a child or their voice was represented on a form and is constructed through the discourse of the EP. Other EPs elicited examples where the child had not been spoken to, thus constituting ‘the imagined child’. Two EPs described:

\[
I \text{ haven’t always spoken to the child but I have them in mind so it depends on the situation (Susan);} \\
And; \\
I \text{ talk a lot about kids, quite often without meeting them at all and without them having the opportunity to understand what’s at stake (Michael).}
\]

Both EPs were frank about not always having the opportunity to speak to children and young people. This form of practice could arguably align with more consultative models of educational psychology discussed at the start of this chapter wherein other professionals are facilitated to work with children and young people. This can mean that the EP does not work directly with the child with the underlying premise being that the EP consults with those who work more closely with the child or young person (Cording, 2011), for example, through teachers, in efforts to achieve change for children’s development and learning (Leadbetter, 2006). Thus, EPs are faced with the challenges of evaluating the effectiveness of their work delivered through other professionals (Eddleston & Atkinson, 2018) to the extent that Farrell and Woods (2017), in their discussion of educational psychology consultation, caution against only relying on second hand information as this could be unreliable and unethical. Correspondingly, Wagner (2000) stipulates that consultation does not mean not working with children and young people and describes a process of seeing children in the classroom, including asking about their interactions, such as how they work, what they are doing, how they get help, to understand their social and learning context to develop “hypotheses” about the child as a learner (p.16).
However, what Susan and Michael describe is a process of representing children without speaking to them and thus the child as imagined needs to be explored further. Susan in particular says she has the child ‘in mind’. This relates somewhat to person-centred practice (to be discussed in the following chapter) where the needs of the person who is the subject of planning remain the focus (Coyne et al., 2018), but does not necessarily involve having a child in the room, which in relation to children’s views being included in decision making, not meeting a child represents a substantive concern regarding the realisation of children’s participation rights.

However, others had a view of challenges of working directly children, particularly in relation to children’s relationships with people involved. Eleanor outlines in the below extract how other key people might be better positioned to build a relationship with a child where you then liaise through the other person.

Eleanor states:

_I think there are some children in some situations we have no business requiring the child to build another relationship. On the other hand, ideally there is somebody – in those very complex situations – I can think of lots of examples of children in care. Ideally there is someone where it is clearly their role to be the key person and you might work through that key person in some circumstances. (Eleanor)_

While ostensibly children’s views can be established through others, this risks adding more layers of interpretation to the child’s views and voice (see James, 2007). Inclusion of children’s views, regardless of having met with the child, does allow for a shift in the narrative and the foregrounding of issues of concern to the child. However, not including the child, and having them ‘in mind’ risks representing what James (2007) describes as the ‘Western mythologising of “the child’ (p.265). The child’s voice, in being imagined, then becomes allowed to speak on behalf of many other and different voices, thus the child’s voice is universalised (James, 2007). Such practice fails to recognise children’s agency and protagonism (see Larkins et al., 2015), whereby children and young people continue to be subjected to systems of exclusion.

_Rhetorical Tools_

So far, in this chapter, I have drawn attention to discourses, such as consultation, voice and views, constitutive of the broader discursive formation of children’s participation and how it relates to the discourse of rights. However, EPs did more explicitly draw on practices which illustrated more explicit resistance to children’s participatory rights.

This is issue is addressed within the extract below by Thomas who stated:
I think I’ve also referenced it explicitly where I have felt in practice that other professionals are trying to avoid, side-step gathering the views of the child for various reasons and the number of, the mechanisms, the rhetorical tools by which adults are able to delegitimise children’s voices never fails to astound me. Either they’re too young, they won’t understand, it’ll make them anxious, they say what you want them to say – all these sorts of tools which I mostly perceive to be about giving an excuse to not go down that avenue of seeking views. So I have in meetings whether it’s with school leaders or colleagues I talked about actually children have a right to have their views heard. (Thomas)

Thomas identifies ‘the mechanisms, the rhetorical tools by which adults are able to delegitimise children’s voices never fails to astound’ him. Thomas alleges, distancing himself from this practice, evident in the emotive language deployed, that some professionals ‘avoid, side-step gathering the views of the child’. This could be argued to share a rule of practice with what Eleanor proposed other people are better placed to establish the views of children, all which can be read as practices and systems of exclusion (Hook, 2007) that maintain children’s exclusion from decision-making.

The rhetoric around the value of participation continues to dominate policy discourse (Graham et al., 2006), however debate regarding this not translating into improved practice is well documented (James and Lane, 2018; Kilkelley et al., 2004; Lundy, 2007; Tisdall, 2017; van Bijleveld et al., 2013). Children and young people’s lived experience regarding their involvement in decisions continues to be reported as lacking (Graham et al., 2006). Mannion (2012) suggests that in advocating for children and young people there is a tension between utilising a framework as a rhetorical tool as a means to advocate for change versus the practical use of a framework. Thus, Cele and van der Burgt (2015) suggest participation itself has become a ‘rhetorical tool’ where it refers to any practice ranging from thinking about the inclusion of children’s views to full participation. They propose that consultation projects often utilise practice that would be categorised as ‘assigned but informed’ and ‘consulted and informed’ in accordance with Hart’s Ladder (Hart, 1997). However, these regularly fail to respect children as competent and independent actors resulting in children being used as characterising a process as democratic, without fully exploring ways children can participate (Cele and van de Burgt, 2015).

In this way, Thomas is drawing attention to how not fully exploring how children can participate translates into rhetoric countering children’s inclusion, which he describes can ‘delegitimise children’s voices’ through saying ‘they’re too young, they won’t understand, it’ll make them anxious, they say what you want them to say’. Graham et al. (2007) suggest continued resistance exist in establishing children’s voices, even with statutory rhetoric regarding children’s participation as its practice is undertaken in whatever form adults feel is convenient or appropriate. Consequently, children’s views are silenced and they are protected from the
provision of information as a result of adult’s views regarding children’s competence and maturity (Graham et al., 2007). This rhetoric, illustrated by Thomas, falls into more protectionist forms of rights that limit children’s opportunities to have a say on the basis of concerns for their welfare (Tisdall, 2017).

**Conclusion**

Thomas’ extract concludes with him highlighting how it is a child’s right to have their views heard, also usefully offering an important point on which to conclude this chapter. Thomas and others, have offered significant critique and reflection regarding the rhetoric within children’s rights and participatory practice, notably explicating the ongoing silencing of children’s views through the privileging of paternalistic practices which maintain adults’ positions. Such accounts, illustrate how EPs can draw on tensions in challenging the use of voice and views, which exist within children’s rights to work towards a more rights-informed practice.

While this chapter has addressed key debates in relation to participatory practice, EPs also situate their practice within person-centred planning (PCP) frameworks as a mechanism of participation, offering potential for a more developed approach to children’s participation, but also arguably subject to the same discursive systems of where children’s views risk being subjugated. Nevertheless, EPs drew on the discourse of PCP in their accounts, positioning it as a mechanism to strengthen children’s rights, thus, how EPs account for this practice in relation to their understanding and enactment of the UNCRC will be explored in the next chapter.

**Chapter 7 - Educational Psychology, Person-centred Planning and Participation/Beyond Rhetorical – the promise of Person-centred Planning**

This chapter will build on the previous chapters analysis of children’s participation. So far the analysis of EPs’ accounts of their understanding and enactment of children’s rights has focused largely on discourses, such as consultation, views and voice, mobilised by EPs in constructing a discursive formation of children’s rights in
educational psychology. This has included analysis of claims of working in children’s best interests and establishing voice and views where I have identified how the rules of formation and practice can construct systems of exclusion where children’s rights are infringed upon. This chapter will focus on more explicit and concrete forms of practice, notably Person-centred Planning (PCP), which EPs and other educational practitioners undertake with children and young people in efforts to establish their views and involve them in decision making.

The focus on PCP, in this thesis, arose from both shadowing and the interviewing of EPs, where PCP was regularly mobilised as a method of participatory practice favoured within the educational psychology profession.

EP participants in this doctoral research drew on PCP as discourse in illustrating commitment to children’s rights and participation within educational psychology, positioning PCP as a rights-informed practice. For example, Susan, when asked about the enactment of the UNCRC in educational psychology stated:

*I think there are elements of the CoP that I'm quite drawn to that have parallels. The young person and families' voice being held highly or prevalent as part of planning and although there is person-centred planning.* (Susan)

Thomas also drew on a PCP discourse and said:

*I personally hate that phrase ‘the voice of the child’ – it just sounds so patriarchal and hierarchal. And it is reduced to a simple level... It’s tokenistic...That’s not person-centred.* (Thomas)

Thomas has also elevated PCP through his comparison to what he regards as tokenistic practice, not being person-centred, positioning PCP as enhancing participatory practice.

However, the deployment of PCP is not solely from EPs’ commitment to children’s voice and views, but arises from its existence in policy texts, particularly the Special Educational Needs and Disability Code of Practice 2015 (DfE and DfH, 2015) (hereafter CoP), which I have already identified (Chapter 4) as pertinent to the governance of educational psychology and the wider enactment of the UNCRC in England. Consequently, the discourse of PCP is reproduced through their policy texts and practice, thus being continually reconstituted and distributed.

For this reason, PCP warrants interrogation with regard to how it is situated as a rights informed practice in EPs’ accounts of their understanding and enactment of the UNCRC. Through the provision of a framework such as PCP there is scope for offering practice that goes beyond participatory rhetoric. However, as with any
form of practice that aims to establish children’s views and given them due weight, tensions exist in realising
the participatory rights of children and young people.

What is Person-centred Planning

It is important to note that PCP is not a practice that has emerged from educational psychology, but is a
method of planning that is prominent in health and social care and education (White and Rae, 2016). PCP is
said to have emerged in North America more than 30 years ago to enable adults with disabilities to overcome
challenges to inclusion and participation (Corrigan, 2014). The basis of PCP is the provision of individualised
support (Ratti et al., 2016) to ensure service provision that is responsive and shaped to meet individual
services user’s needs (Kaehne and Beyer, 2014). PCP aims to shift power from professionals and stakeholders
to individuals and their families rather than position individuals as passive recipients of care with plans and
decisions being made for them (Ratti et al., 2016). Hence, while PCP is not explicitly a children’s rights
enactment, such focus on power inequality and active involvement in decision making aligns with discourses
present in children’s rights that aim to position children as active and autonomous individuals rather than
passive subjects in need (Cockburn, 2013; Horgan, 2017; Roche, 1999).

PCP features in the most recent CoP (DfE and DfH, 2015) resulting in it gaining prominence as a practice to be
used in developing support and plans for education. PCP has been utilised within the UK’s individualised
support agenda for over a decade (Kaehne and Beyer, 2014) with the principles being said to be embedded
within policy and government regulations in the UK (Ratti et al., 2016). PCP arose as a more prominent policy
discourse in the UK through the Department of Health White Paper Valuing People (DoH, 2001) that
necessitated that PCP was undertaken for adults with learning disabilities and all young people transitioning
from child to adult services, to ensure that young people aged 16 or 17 had more control over and be involved
in decisions about their lives. The report, ‘Aiming high for disabled children: Better support for families’ (DfES,
2007) highlighted PCP as an approach for working with young people, though still restricted to reviews
regarding transition to adult services. Guidance on writing ‘statements of special educational needs’ began to
forefront PCP or child-centred approaches to planning with a focus on considering ways to involve children
and young people with severe or complex learning difficulties who might find it difficult to participate in
traditional review meetings, alongside improving parental engagement and involvement (DfCSF, 2010).
According to this guidance, the core elements of PCP are based on the idea of the person being at the centre
with rights, independence and choice, by listening to what the person wants and involving family and friends
to achieve what is safe while reflecting on a person’s capacities to improve quality of life securing PCP’s
relationship to the enactment of rights.

Person-centred Planning in the Special Educational Needs and Disability Code of Practice 2015

The relationship between PCP and rights is strengthened through the prominence of PCP in the CoP (DfE and
DfH, 2015, a key policy text with regard the UK government’s enactment of the UNCRC (see Chapter 4). The
involvement of children, young people and parents in decision making is central and a statutory requirement of the CoP. Consequently, any mechanism offered in fulfilling this requirement, for instance PCP, is implicitly positioned as a rights enactment.

Equally, EPs drew relationships between the CoP and PCP, for example, Michael’s assertion that ‘I think it accentuated person-centred planning’ (Michael).

In describing expectations regarding the involvement of children, young people and parents in decision making the CoP outlines a series of expected activities. These include; ensuring children and young people and their parents, express their views, are involved in the decision-making, provided with information that can be understood, language is jargon free, focus on strengths and capabilities, and opportunities for children or young people to state what they want for the future (DfE and DfH, 2015). This is concluded with the CoP stating how:

This approach is often referred to as a person-centred approach. By using this approach within a family context, professionals and local authorities can ensure that children, young people and parents are involved in all aspects of planning and decision-making. (DfE and DfH, 2015; p.148)

Therefore, within the CoP, being ‘person-centred’ is mobilised and juxtaposed as part of the discourse of participation of ‘involving children, young people and parents in decision-making’ (DfE and DfH, 2015; p.147). The commitment to participation in decision making and PCP arguably constructs a more developed form of participation compared to establishing children’s views through consultative approaches, if considering this through the lens of popular participatory frameworks such as Hart’s Ladder (Hart, 1992).

**Person-centred Planning in Educational Psychology Governance**

PCP is also represented in a key EP governing text, the ‘Guidance for Educational Psychologists (EPs) when preparing reports for children and young people following the implementation of The Children and Families Act 2014’ (hereafter Guidance for EP reports) (British Psychological Society, 2015). This replication of the PCP discourse within educational policy texts illustrates the professions’ reproduction of UK government discourse. This is necessitated by EPs having a responsibility, in line with their professional and statutory remit to provide psychological advice, to establish the views and preferences of children and young people (Hill et al., 2016).

For example, the Guidance states that;
When providing advice and information on SEND to local authorities the EP provides a unique perspective, based on a holistic and child-centred approach and rooted in psychological theory. (BPS, 2015; p.3-4).

The voice of the child or young person needs to permeate the advice...The process of providing the EP’s advice should always be embedded within a person-centred approach. (BPS, 2015; p.6)

Throughout the Code of Practice there is an emphasis on collaboration between practitioners and children and young people and their families. There is an expectation that everyone should adopt a person-centred approach (section 9.23) and that there should be ‘high quality engagement with child and parents’. (section 9.7) (BPS, 2015; p.7)

The Guidance for Reports document mobilises the discourse of ‘centredness’ in specifying how ‘voice of the child or young person needs to permeate the advice’ and how ‘everyone should adopt a person-centred approach’, amongst other examples. The statements in the Guidance recognise the requirement to forefront children’s voices. Nevertheless, PCP remains undefined, with the Guidance also referencing a ‘child-centred approach’. This is not differentiated from PCP, though there is a commitment to work that is ‘rooted in psychological theory’, thus illustrating EPs allegiance to the psychological complex (Rose, 1985) and how this continues to mediate participatory practice.

**Person-centred Planning - practices of participation**

As I have identified, PCP is clearly outlined within policy texts as a mechanism of ensuring participation. However, in the way that consultation, voice and views are differently constructed, mediated by professional and institutional discourses, PCP will also be subject to the same mediating effects, which may limit or expand PCP as a rights based practice.

PCP was offered a more developed form of participation. Eleanor stated:

*It’s [views] evolved over the different reiterations of the Code of Practice from just seeking views to just now it talks more about participation and person-centred planning.* (Eleanor)

Eleanor indicates that establishing children’s views has developed over ‘the different reiterations of the CoP’, positioning PCP as a development of practice, which illustrates moving beyond ‘just seeking views’. Importantly, Eleanor’s statement counters arguments earlier in Chapter 6 regarding the reduction of children’s participation to voice and views as representing a limited iteration of Article 12 and children’s
participation in decision making. By narrating this progression Eleanor is illustrating her understanding that more is needed than establishing views alone and has located PCP as a more robust form of participation. This is an important shift to make if the discourse of views without the influencing of decisions is to be understood as a more limited enactment of Article 12 and further down Hart’s Ladder of Participation (Hart, 1992).

**Child, Family and Person in Person Centred Planning**

How PCP is situated in relation to rights goes beyond how it is mobilised as a practice, but in how children and young people are positioned within PCP if PCP is to be a mechanism to uphold children’s rights.

Susan outlined their view of PCP as follows:

*The young person and family’s voice being held highly or prevalent as part of planning and although there is person-centred planning I think the Code of Practice sort of privileges family-centred planning not necessarily child-centred planning.* (Susan)

*I think if the language for me is a little bit confusing because I think it would be a little more helpful to call it family-centred planning rather than child-centred planning if that’s what it is because even my work isn’t, it’s not child, it’s not completely child-centred though I know there are some EPs within our service who will say if the child says it’s going to be blue it’ll be blue but I say well it’s not always the case because you’ve got to unpick different things and you know, if you call a spade a spade it’s family-centred planning with child voice privileged.* (Susan)

Susan draws attention to the tension between the child and the family, which is indicative of the rules of discourse within children’s rights more broadly, for example the tension between protection and participation (Federle, 1994; Thomas & O’Kane, 1998). Susan is of the view that the CoP privileges family-centred planning (FCP) rather than child-centred planning (CCP). Susan narrates how, while the child’s voice is ‘privileged’, it is not necessarily the centre. This reflects wider tensions evident in rights discourses in balancing differing perspectives when upholding children’s participatory rights with parent or carers’ perspectives on what is in a child’s best interest, but also calls into question how to determine that children’s views have been given due weight.
Family-centred vs. child centred

The respect for parents’ wishes and their rights in relation to their children is outlined across a number of rights frameworks. For example, the Universal Declaration of Human Rights states that ‘parents have prior right to choose the kind of education that will be given to their children’ (UN, 1948), reflecting a privileging of parents’ wishes.

Similarly, the UNCRC also advocates parental duties and outlines:

States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures (Article 3; p.4)

The argument is not to disparage or limit the role of family in a child’s upbringing. There is a clear recognition in the UNCRC of the rights and duties of parents, legal guardians or family members who are legally responsible for a child, providing they are working for a child’s best interests and offer protection (see Articles 3 and 5 – Appendix A). Undeniably, the UK has a complex and far reaching policy architecture to address any concerns regarding a parent’s capacity to provide and safeguard their children (Parton, 2011), which is not for close examination here.

Parents, carers and family life have a substantial place in the lives of children and young people, notwithstanding Susan’s claim that the CoP privileges family-centred planning over child-centred. What is required is closer attention to processes that aim to strengthen the involvement of children and young people in decision making, for example, the CoP’s commitment to the involvement of children and young people in decision making. PCP is implicitly connected to this aim making the tensions between family and child-centred planning a risk to the reproduction of practices that marginalise children’s views.

In some respects the issues arising how PCP can be understood in relation to children’s rights arises from the conceptual disparity within child-centred practice. Chung and Walsh (2000) identified forty meanings of the term ‘child-centred pedagogy’. While, Chung and Walsh explore being child-centred rather than person-centred, this does reflect the scope of multiple interpretations of the terms, particularly in that person-centred neither refers or specifies the child or family. Consequently, how the child is located in PCP remains unaddressed.
Differentiations relevant to FCP and CCP are more common in the health literature where there are focused discussions on the differences between family-centred, person-centred and child-centred care (see Coyne et al., 2018). What is clear is how the participants in my study reflect wider critical discussion about practices grounded in centredness can be interpreted in different ways by different people with differing perspectives on how they are applied (Coyne et al., 2016; O’Connor et al., 2019; Uniacke et al., 2018) impacting on how children and young people are located. This can be representative of how participatory practices are understood, where adults’ relationship to the child shifts and is repositioned leading to the child being an object or subject within the practice or whether a child’s views are given due weight.

Family-centred care (FCC) proposes involving families in the provision of children’s care and treatment through whole family participatory in viewing the whole family as recipients of care (Shields, 2015; Söderbäck et al., 2011; Uniacke et al., 2018). Uniacke et al. (2018) argues how the inclusion of families in a child’s care contributes positively to treatment and recovery indicative of what Roche (1999) describes as the interconnectedness of decision making. While not explicitly expressed, this holistic approach could be argued to have scope to facilitate an inclusive approach to determining best interests wherein children and their families collaborate together to reach a decision.

A particularly interesting way to explore this further was discussed by Susan who noted that children’s participation is reflective of:

A microcosm of life. Yes I think, I like that because it's some of the practice behind person-centred planning that's around diverse communities are stronger communities. (Susan)

The idea of a microcosm puts a child’s right to participation within a family or community context reflecting what Press et al. (2012) suggest wherein children are situated within multiple discourses as individuals, family members and members of their community. A microcosm can be understood using Bourdieu’s field theory (Bourdieu, 1990) as a system of objective relations within a social space or social microcosm structured by its field of properties, relations and processes (Killi, 2013). Hence, a family, or arguably any social space, according to Pithouse et al. (2020) is produced by and reproduces the social world in which it exists. Thus, in this sense a child’s autonomous decision making seems unrepresentative of ordinary community activity. Considering participation in this way places it within what Percy-Smith (2015) reflects to be participation in everyday life in contrast to participation that is often ‘performed’ through institutional mechanisms rather than ‘lived’ participation within daily social worlds (Pells, 2009). Therefore, the UNCRC recognises, as Press et al. (2012)
discusses, how children are embedded within their family with approaches to programming needing to
respect a child’s family life alongside their individual agency and relationships outside the family. It is
suggested that discussion of autonomy in relation to rights fails to recognise the interconnectedness of
relationships between adults, parents [and carers] and children (Roche, 1999) and how decision making rarely
takes place in isolation includes parents, carers, children and professionals (Coyne and Harder, 2011). Thus, it
is argued that the focus on autonomy can cause a dichotomy between the rights of the child and the rights of
the parent (Roose and Bouverne-De Bie, 2008).

Accordingly, the UNCRC acknowledges parents and caregivers as having main responsibility in children’s
upbringing albeit that support is sometimes required in creating ‘optimal environments’ from the wider
community system of service providers and national policy makers (Britto and Ulku, 2012; p.93). Thus,
parents’ rights exist only as long as they exercise their responsibility to act in the best interest of the child
(Lundy, 2005; Roose and Bouverne-De Bie, 2007), highlighting the complexity of rights. Such challenges in
practice can operate in subtle ways, however they can be brought into stark view in cases such as Victoria
Climbie where it emerged the social worker did not speak with Victoria apart from in the presence of those
abusing her (Lord Laming, 2003), demonstrating in the harshest of ways how not speaking to, listening and
hearing children can have serious implications in the protection of children, and establishing the requirement
for the consideration of the plurality of rights in enactment. EPs addressed this issue, particularly Susan, who
mobilised a discourse of children’s voices being ‘held highly’ within the context of privileging family planning.
While, it can be argued that EPs did not outline the requirement to give weight to children’s views, holding
children’s voice highly could be said to be indicative of this. Arguably, there is scope for a shift in a discourse
towards giving children’s views due weight, in accordance with existing practice to hold voices high. Due
weight could have performative effects with regard to how those views are considered in decision making
processes.

The need for joint consideration of rights is discussed by Clark and Ziegler (2014) who argue that children are
predominantly positioned within the private over the public sphere as dependents of their parents requiring
protection and guidance. For instance, the patriarchal family denied rights to women and children privileging
a male dominated law system Olsen (1992). Therefore, family-centred planning may well reinforce such
systems of patriarchal oppression. Ford et al. (2018) suggest that, while family-centred planning may claim to
be child-centred, children or young people may have a less active and prevalent role than the parents.
Therefore, it is warned that within FCC, viewing the family as the ‘unit of care’ does not always lead to the
child’s welfare being the primary aim (Uniacce et al., 2018). Similarly, Ford et al. (2018) caution that FCC risks
diminishing the role of the child as the child’s interests are circumscribed by the parents with children’s wishes overruled in favour of the parent’s view of what was in their best interest. They also arguing that FCC does not comprehensively involve children in being part of their daily healthcare with a tendency to collaborate with mothers. As such, upholding respect for rights of the whole family in the name of best interests risks children’s views being side-lined in favour of the privileging of adult perspectives (Tisdall, 2016). Thus, such practices could contravene more child-centred approaches and open up space for a child’s views to be discounted on the basis of the needs of the whole family. Consequently, collaborative programmes or practices need ‘to ensure children’s perspectives, needs and desires are not unintentionally subsumed by the intentions of professionals and family members’ (Press et al., 2012; p.34). However, this would seemingly encounter challenges. It is suggested that while the language around FCC is said to be ‘appealing in its sentiment and its rationale’ it results in confusion and ambiguity (Uniacke et al., 2018; p.467), much the same as discourses associated to children’s rights such as voice and views, discussed earlier in this chapter.

Child Centred

The challenges described regarding FCC parallel tensions evident in how discourses of best interests can be deployed to override a child’s right to participate (Daly, 2018; James, 2008). In countering FCC, Ford et al. (2018) posit that child-centred care (CCC) is an approach to ensuring children are situated centrally within healthcare to reflect the changing position of children in society. Likewise, Coyne et al. (2016) propose that CCC incorporates a child’s right to participation in decisions about their care, situating child-centred approaches within popular participatory discourses that draw on the new sociology of childhood literature (James and Prout, 2015). Ford et al. (2018) argue that concentrating mainly on the family when establishing care may lead to a lack of recognition of the wider context and relationships outside of the family and thus argue that CCC is necessary to ‘elevate the child to a more prominent role as a key and active member of the partnership acknowledging the position of the child within the family’ (Ford et al., 2018; p.40).

However, as already acknowledged the idea of being ‘centred’ has a multitude of meanings and even ‘child-centred’ is constituted differently in the discourse. Chung and Walsh (2000) identified three key understandings of being child-centred; the child being the centre of their world, the child at the centre of schooling, and, thirdly, more progressive ideas suggesting children should direct their own activities. Thus, while being child-centred can indicate participatory practice and child-led activity, being child-centred is also linked to developmental constructions and pedagogical practice. For instance, being child-centred can be traced back to Fröebel (1885), whose thinking was grounded in developmental discourse where children view...
themselves as being the centre of all things and younger children need tailored schooling in line with their developmental stage (Chung and Walsh, 2000). Fröbel (1885) tended to use the idea of being child-centred to conceptualise development rather than give specific methods of pedagogical practice (Georgeson et al., 2015).

Consequently, establishing definitions of child-centred practice is fraught with difficulties. Georgeson et al. (2015) identified how cultural understandings of children and childhood construct discourses that influence conceptualisations of child-centred practice, consequently being able to establish shared definitions is problematic. While some common terms between practitioners regarding child-centred practice were identified in the Georgeson et al. study, such as freedom, learning through play and developing activities in response to the child, these terms will still be shaped by cultural and professional understandings of the terms, whether that be needs or rights. For example, such concepts such as freedom and being responsive to children’s needs and wants could be loosely linked to participatory Articles of the UNCRC, such as Article 13 and 14, which promote freedom of thought and expression. However, developing activities in response to children’s needs also invites a protectionist discourse where children may become the subject of care and control through adult interpretations of best interest and constructions of need, a discourse prevalent in educational psychology practice as discussed in Chapter 5. Hence, being ‘child-centred’ does not a guarantee a rights discourse and does not automatically contribute to the realisation of Article 12 and a child’s right to have their views given due weight in decision making.

**Person-centred**

So there are particular ambiguities and conceptual difficulties in relation to child-centred and family-centred practices, which are arguably replicated in PCP, particularly, in relation to the ambiguities of the specification of the subject of the ‘person’. As with the use of child-centred and family-centred, there are a number of approaches and applications of PCP, and commonalities exist across these. A number of ‘core elements’ are equated with PCP such as: the person being at the centre of the planning and decision making; creating action plans; ensuring accountability; and follow up (Corrigan, 2014). It is suggested by Hughes et al. (2018) that PCP encompasses humanistic perspectives grounded in choice, growth and constructive fulfilment (Rogers, 1951). The PCP model has found its way into the development of a number of practical applications including Promoting Alternative Tomorrows with Hope (PATH) (Pearpoint et al., 1993), Making Action Plans (MAPS) (Forest et al., 1996) and Essential Lifestyle Planning (ELP) (Smull and Sanderson, 2009). Helen Sanderson, a key individual in promoting PCP approaches in the UK, and who co-authored the Department of Health’s
guidance on PCP (DoH, 2010), identified five features of PCP: (1) The person is at the centre to develop an ethos of shared power and increased control over their lives, including being at the centre of planning and consulted throughout, deciding who is present and ensuring accessible meetings drawing on creative approaches; (2) Family members and friends are included in planning and are partners in the process; (3) Plans are developed that focus on what is important to the individual, their capacities and the support that is needed; (4) Actions that are related to life more broadly that extend beyond what is available and include what is possible; (5) PCP is grounded in listening, learning and further action. Hence, PCP does appear to offer a framework to work within, but is marred with similar conceptual difficulties as highlighted earlier by Susan.

**Conclusion**

So, where does this leave PCP approaches in terms of the balance of child and family and the rights of the child? PCP is advocated as a method that allows individuals to have a voice, particularly those that experience difficulties with communication (Barnard-Dadds and Conn, 2018). A central aspect of PCP is concerned with ensuring the individual is at the centre of planning and decision making (Holburn, 2002). PCP approaches are seen to strengthen the voices of pupils and educational practitioners to work towards meaningful involvement (Greenwood and Kelly, 2017a) but, arguably, they do not differentiate between the family and the child. According to Barnard-Dadds and Conn (2018), PCP encompasses a range of practices aimed at developing pupils to move from ‘support’ to ‘readiness to participate’, reflection on pupils’ strengths and interests and enabling pupils to participate in decisions that are important to them, reflecting similar hierarchal shifts as seen in participatory frameworks. All of these descriptors are constitutive of discourses of children’s participation and progressions from support, consultation to involvement in decision making. PCP, along with ensuring service users’ views are included, also focuses on involving families and those who support the individual (Mansell and Beadle-Brown, 2004). On the one hand, the account provided by Sanderson (DoH, 2010) promotes a holistic approach aligns itself with aspects of the UNCRC that mandate respect for the rights, responsibilities and duties of parents as outlined specifically in Articles 3 and 5 (UNICEF, 1989) as well as the participatory rights of the child who is the subject of the planning.

Nevertheless, child welfare models that are seen to be responsive and effective operate in a holistic and family-centred way to meet the needs of individual children and their family (Pecora et al., 2010). Arguably a child’s needs cannot be separated from the family unit (Press et al., 2012). Hence, it is argued that children’s participatory initiatives promote western individualism founded on neoliberal economic and political values (Burr, 2004). Nevertheless, despite the dominance of the PCP rhetoric (Robertson et al., 2007) literature
questions if the rhetoric of choice is reflected in the lives of disabled people (Williams, 2011) – similar to questions asked in this study regarding whether the rhetoric of participation reflects how children and young people experience decision making processes. Beyond even these political problems, it has been acknowledged that, despite the rhetoric, little research is available regarding the efficacy of PCP (Roberston et al., 2007; Corrigan, 2014; Kaehne and Beyer, 2014).

However, this research did not aim to evaluate the efficacy of PCP, but rather to explore how PCP upholds principles of children’s rights as mechanism of participatory practice. The analysis of the discourse of PCP cannot account for the values and epistemological position of EPs or other practitioners in enacting PCP, since child, person or family-centred practices have scope to work within rights based frameworks. However, the ambiguity of the child’s position within PCP presents a challenge for how a child’s participatory rights would be enacted. Consequently, the shift in focus to the child or young person does not ensure the right of the child to have their views taken into account as set out in Article 12 since, as also argued by Daly (2018), the extent of ‘weight’ given to views is not defined. As such, the requirement to give views ‘due weight’ is often evaded. Nevertheless, paying more attention to the child’s position within planning and decision making processes may allow for consideration of determining how their views are given ‘weight’.

Continuation of how subject positions constitute understanding and enactment of the UNCRC will be explored further in the next chapter. What analysis of PCP has illuminated is how ambiguity in relation to the position of the subject mediates how practice is enacted. This can be said for how advocacy practices are undertaken and how EPs position themselves in relation to children and young people.

Chapter 8: Educational Psychology – Advocates or Duty Bearers

This chapter seeks to explore advocacy as discourse constitutive of rights and the UNCRC (C. Oliver et al., 2006). Advocacy, while pre-existing the UNCRC, is implicitly and explicitly bound to children’s rights as a mechanism that can be informed by the UNCRC (UNICEF, 1989) in balancing rights and protection (Cascardi et al., 2015).
The chapter aims to explore how educational psychologists’ (EPs’) account for their use of advocacy, not only as a distinct practice, but in how EPs account for their understanding and enactment of the UNCRC discursive practices of advocacy.

The attention to advocacy arose from initial and informal conversations with EPs in exploring the EP role where EPs identified as advocates. This somewhat countered my own perspective on how EPs constructed their professional identity in relation to children’s rights. In coming from an advocacy professional background, I understand advocacy as distinct from other professional roles. In this way, exploration of advocacy was not an initial objective of this doctoral research, but was a discourse which came to be unearthed, being positioned as significant in exploring how EPs account for their understanding and enactment of the UNCRC.

The academic literature revealed that EPs can self-identify as advocates in academic literature (see Greig et al., 2014; Norwich et al., 2006), however, there is a dearth of literature and research clarifying how advocacy is enacted in educational psychology reflecting more on mechanisms of seeking and representing the views of children and young people in undertaking the professional activities of their role (Buck, 2015; Harding & Atkinson, 2009). This chapter considers what is advocacy and how it is deployed across a range of arenas and professional groups in exploring how EPs position themselves as UNCRC duty-bearers.

**Advocacy Origins**

Advocacy can be traced back to the 17th Century and a campaign by ex-patients for improved conditions at a psychiatric hospital in Bedlam 1620 marking an early account of self-advocacy (Dalton and Carlin, 2002; Morgan, 2017). Following this, John Perceval 1845 established the Alleged Lunatics’ Friends Society, which advocated for people in asylums and campaigning on associated issues (Morgan, 2017; Wetherell and Wetherell, 2008). Hence, advocacy is established as a mechanism to represent those who are marginalised in society, or as (Spivak, 1985) would define, the ‘subaltern’.

The development of independent advocacy as known today is said to be attributed to American civil and feminist rights movements in the 1960s and 1970s (Morgan, 2017). In Britain the advocacy movement within psychiatric services grew with the formation of several user groups who undertook collective self-advocacy (Dalton and Carlin, 2002). Subsequently, the United Kingdom Advocacy Network (UKAN) was established to represent the range of advocacy services, patient councils and user groups that had emerged (Dalton and Carlin, 2002).

**Defining Advocacy**
Advocacy practice has no agreed upon definition (Henderson, 2007), though there is a general consensus that advocacy seeks to represent and voice the issues for people who are unable or are disempowered to do so for themselves (Boylan et al., 2016). Descriptions of advocacy practice propose that it involves taking action to support people to have a say, secure their rights, get the services they are entitled to and have their needs represented with advocates working in partnership with those that they support (Action 4 Advocacy, 2002).

Advocacy in its most fundamental form, as defined by the Oxford dictionary is ‘Public support for or recommendation of a particular cause or policy’ or ‘the profession or work of a legal advocate’ (Oxford Living Dictionaries, 2018) somewhat positioning advocacy within a judicial discourse. However, (Bateman, 2000) draws on the definition as advocacy pleading in support, highlighting the instructional element of advocacy and its role in requesting help, but interpreting that ‘pleading’ refers to the act of reasoned argument as someone who speaks on behalf of another.

**Advocacy Practice**

Acts of advocacy can take place on an individual, service, organisational or political level and can include individual or issue based advocacy, or cause based or policy advocacy.

**Individual and issue-based advocacy**

Individual advocacy, also referred to as issue-based advocacy, is most common in child welfare arenas (Fox, 2018). Jenkins (1995) describes issue-based advocacy as having two forms, passive, which involves speaking on behalf of child or young person as they are seen to need special protection or additional support and active advocacy, which involves enabling an individual to speak up for themselves, promoting empowerment and the development of independence. Advocacy can be defined as including self-advocacy, citizen advocacy, professional advocacy or patient advocacy (Sang, 1989). Self-advocacy refers to people asserting their own rights and communicating their own needs (Jugessur and Iles, 2009). Citizen advocacy, sometimes referred to as lay or volunteer advocacy refers to citizens advocating for other citizens (Sang and O’Brien, 1984) who are devalued and disadvantaged (Wolfensberger, 1983). Citizen advocacy is grounded in developing relationships centred on friendship and care to work together towards independence and community participation (Jugessur and Iles, 2009). On the contrary, the professionalization of advocacy services where sees a professional advocate employed to navigate complex systems and speak out on behalf of an individual (Dalrymple, 2003). Patient advocacy is advocating for the best care for patients, with several health professions laying claim to the role navigating between supporting patient decisions with paternalistic claims to represent
the patient (Swartz, 2002). Consequently, to undertake the role of an advocate means to represent someone unable to represent themselves, with advocacy arising from speaking out in relation to marginalised and oppressed individuals and groups.

Cause-based or policy advocacy

Cause-based advocacy entails undertaking collective action to challenge injustice on a more systemic level, either locally or nationally (Pithouse and Crowley, 2007) and can be viewed as a political process wherein groups work towards changing policy through protest or political action (Young and Everitt, 2004). This can also be understood as policy advocacy aimed at changing policies that influence practice or group wellbeing (Mosley, 2013), impacting issues affecting marginalised people or groups through addressing issues of civil rights and social welfare (Feldman et al., 2017).

As can be seen, there is significant conceptual disparity in defining advocacy, seen to effect advocacy practice and responses to it, with a study of the role of advocacy illustrating that children, parents and carers, social care professionals struggled to provide a definition (Oliver et al., 2006). This gives rise to Ganguly’s (1992) reminder that representation is as much a political as it is an epistemological question that requires interrogation or else risks totalising practices or misrepresentation of the subject.

Theoretical Foundations – Performativity and Representation

In exploring advocacy through notions of representation I draw on (Holzscheiter, 2016), who puts forward a theoretical approach to conceptualising representational power through political representation as performative practice, using Saward’s theory ‘The Representative Claim’ (Saward, 2006). Central to Saward’s theory is claim-making, central to representation and prioritising the performative aspects of representation over the institutional (i.e. electoral representation). The consideration of the performative aspects of representation is not intended to denounce institutional representation, but to demonstrate how representation functions outside of formal, institutional processes. Saward states how ‘representing is performing, is action by actors, and the performance contains or adds up to a claim that someone is or can be ‘representative’” (p.302). The claim-maker constructs a new image of itself through the act of claiming to represent and in turn constructs a new image of the object (Saward, 2006).

Saward (2006) draws on how representation can be performative. Performativity, as understood by Judith Butler (2010), can be used to understand how acts or processes that appear to be stable phenomenon are
constituted or deconstituted. Gender, as a case in point, presents questions of whether gender pre-existed the expressions and manifestations we understand to constitute gender. Butler, through performativity, challenges ideas that gender existed as metaphysical matter before the expression of it, similarly challenging other categories presumed to be pre-existing, such as the economy, categories denoted as ‘bounded, identifiable and knowable’ (Butler, 2010; p.147). Butler bases much of her theory of performativity on Austin’s ‘speech acts’ that differentiate between illocutionary and perlocutionary performances (Austin, 1965). Illocutionary acts are the uttering of sentences, for example, commands, assertions, guesses, suggestions (Kissine, 2008), able to induce a certain result or effect due to its status as a command or instruction (Butler, 2010). Perlocutionary performatives only create an effect with particular conditions in place, hence the utterance alone cannot lead to change but trigger a series of actions that may lead to the intended effect (Butler, 2010), thus perlocutionary acts are dependent on the listener. Hence, a system of discursive and non-discursive practices and institutions reconstitute what is thought to exist in reality and constitute the conditions required for the effect of the performative utterance (ibid). Likewise, Powell and Gilbert (2007) suggest that ‘performatives utterances’ become institutionalised across time becoming identifiable and carrying meaning leading to a reduction in the power of the discourse, thus becoming stuck within practices and institutional structures. In other words, advocacy and the repetition of the discursive practices that constitute what it is thought to mean to advocate and be an advocate constitute a certain form of reality. The performative utterances of advocacy do not necessarily create the conditions for the effect of acts of advocacy. I would argue that the proliferation of child voice and advocacy has developed and constituted limiting effects that do not allow for the production and development of rights informed practice.

Holzscheiter (2016) builds on this idea but emphasises the exclusionary effect of representational power arising from performative practices that delineate boundaries between legitimate and illegitimate actors of representational claims. Saward’s theory notes that representation only occurs through the act of claim-making and how representing constructs a new image of the subject or object (Saward, 2006). Thus, representation is imbued with power, as postulated by Holzscheiter (2016), as it comprises of the possibility and legitimacy to articulate, defend, and advocate for the views and interests of others without direct involvement or control. This kind of representation infers formal empowerment and recognition of someone to advocate and act in the interest of another and is therefore bound to discourse, where the power to represent governs who is authorised to speak and the discourse delineates what is acceptable, thinkable and say-able. These performative practices can then transform into institutionalised forms of acting and speaking (ibid).

A performative understanding of advocacy gives a mechanism to challenge its claims of representation. Performativity contests the representational belief that words are able to represent pre-existing things and
seeks to illustrate the excessive power afforded to language to define what is real. Performativity over representationalism leads us to refocus attention from consideration of descriptions of reality to concerns of practice and action (Barad, 2003). A question raised by Barad (2003) is to consider the ontological distinction between representations and what they claim to represent where what is represented is independent of the practice of representing. Examining the concept of advocacy through performativity may allow us to move beyond an understanding of rights as the mere expression of advocacy and voice but to pay attention to the practices of advocacy.

**Advocacy and Representation - Spivak**

Nevertheless, the ways in which advocacy can take place does not rest only on performative speech acts, but also on systems of representation and how they are understood. Spivak (1994) alerts us to conceptual variation in practices of representation. Spivak argues that forms of representation that are conflated, such as ‘speaking for’ in political contexts or ‘re-presentation’ through artistic or philosophical means, are problematic. In the essay, ‘Can the Subaltern Speak?’, Spivak details a conceptual analysis of the phrases ‘vertreten’ (represent) and ‘darstellen’ (re-represent). Spivak argues that Vertretung is a rhetoric of persuasion that seeks to represent the ‘dispersed and dislocated’ (absent collective) subject. The ‘dislocated’ subject, unable to represent themselves sources a ‘representative’ to work in their interest who concomitantly has authority and protection from governmental power – a proxy who does not share their interests. The subjects ‘class interest’ risks being overtaken by political influence. Darstellung is then ‘rhetoric as tropology’ (Spivak, 1994; p.71). This presumably draws on Nietzsche’s differentiation between rhetoric as a system of tropes and rhetoric as a form of persuasion (Logan, 1978) with tropology being the study of figurative discourse analysing attempts to be both representational and figurative and claims to represent what is possibly ‘unrepresentable’ (Carroll, 2000). Considering rhetoric as persuasion and tropology together, as Spivak does, is to attend to an idealism of a place where oppressed subjects speak, act and know (ibid). Thus, challenging assumptions that behind ‘representation’ are the issues, rights and material interests of the subjects that can be ‘represented’ or ‘advocated’ for. Spivak continues to argue that they ‘must note how the staging of the world in representation - its scene of writing, its Darstellung dissimulates the choice of and need for 'heroes', paternal proxies, agents of power – Vertretung’ (Spivak, 1994 p.74). Hence, representational tropes operationalised in the act of representing disguise other forms of representation that assume substitution or provide a proxy. In terms of performativity, performative utterances of acts of advocacy conceal the possibilities available for the represented to speak or be spoken for and the discursive practices that constitute representation. It is argued that adopting Darstellung prevents forms of ventriloquism (Ganguly, 1992), yet Spivak argues for a complicity between the two and indicates that preference for Darstellung shrouds the work of Vertretung. Both forms
of representation emerge as inevitable in recognition that the subaltern, unaware of their social condition, is unable to speak for themselves (Britton, 1999). The point, however, is to move forwards from the positivist representation of the real that reflects ‘mimetic’ notions where representation is speaking of marginalised subjects (Ganguly, 1992; p.62) but correspondingly acknowledging representation as productive and performative.

**Advocacy for Children**

So this review of the conceptual underpinnings and framings of the concept of advocacy poses the question of how these systems become deployed in advocacy practice, specifically, with children and young people.

**Child Advocacy Roots**

Advocacy for children has its roots in child-saving approaches (Takanishi, 1978), driven by perceptions of children’s needs and protection (Cascardi et al., 2015). Children were seen as vulnerable to abuse and, while adults’ intentions may not be malign, competing pressures may lead adults not to work in a child’s best interests, thus the requirement for advocacy emerged from a recognition that children were in a powerless position in need of structures to enhance their position (Melton, 1983). Consequently, children’s advocacy deployed a mechanism of claim-making wherein their advocate or ‘proxy’ did necessarily share their interest. Children are the ‘dislocated’ subject (Spivak, 1994).

The impetus for advocacy based on rights arose from the conceptual shift that took place with the UNCRC and the changing perception of children and young people as rights holders (see Cascardi et al., 2015; Oliver and Dalrymple, 2008; Prout and James, 2015). Article 12 of the UNCRC outlines children and young people’s participatory rights and underpins advocacy practice (Oliver et al., 2006). Child advocacy has arisen through child rights protagonists who seek to challenge attitudes and assumptions about children and young people in an effort to secure their political, social and civil rights with the underlying tenet being that children and young people are afforded rights and treated as equals (Boylan and Dalrymple, 2011).

The Children Act 1989, in a UK context, outlined the right of children to participate in decision making and to make complaints and represented steps towards a change in culture of listening to children (The Centre for Children and Young People’s and Participation, 2016). This marked the beginning of legitimised or institutional systems of representation (Saward, 2006) for children. Advocacy services emerged in the UK principally for children who receive welfare services in an attempt to reconcile previous failures by adult led systems where children were not listened to (Utting, 1998; DoH, 2000; Waterhouse, 2000). The Waterhouse inquiry – Lost in
Care (Waterhouse, 2000) revealed that children had tried to complain when dissatisfied but felt their voices were not heard. It was acknowledged in the Munro Review of Child Protection (Munro, 2010) that adults voices are often heard above that of children when communicating to professionals, a recurring issue in serious case reviews of children not being seen enough by professionals and their wishes and feelings not being asked leading to the reports calls for a more child-centred system. Here ‘voice’ and advocacy have remained a ‘rhetoric of tropology’ or Darstellung (Spivak, 1994; p.75). Their existence suggests representational tropes have been deployed, yet remain performative in that they are perlocutionary speech acts where their intended effects are dependent on the listener (Butler, 2010), who are in the case above privileged adult voices.

**Children’s Advocacy in England - Policy and Provision**

Policy in England sets out certain statutory requirements for the provision of advocacy for certain groups of children and young people. Children and young people in care or in need were afforded the right to make representations in the Children Act 1989 with this being extended to care leavers in the Leaving Care Act 2002 (Brady, 2011). However, it was only the Adoption and Children Act 2002 that placed a duty on LAs to give assistance to children and young people who wished to make a complaint with the legislative term ‘assistance’ interpreted in guidance as the provision of advocacy (The Centre for Children and Young People’s Participation, 2016). The accompanying guidance: *Providing Effective Advocacy Services for Children and Young People Making a Complaint under the Children Act 1989* (2004) outlined the government’s commitment to advocacy for children and young people who are under the care of the Local Authority (Section 24D and 26 of the Children Act, 1989). Further statutory guidance has outlined the provision of advocacy for care leavers and children in need (The Centre for Children and Young People’s Participation, 2016). The Secure Training Centre Rules (1998) gives the right to children and young people who are in secure units to access advocacy and the Mental Health Act (2007) provides any child or young person the right to advocacy if sectioned under the Mental Health Act or at risk of being sectioned (Brady, 2011). The Health and Social Care Act 2001 outlines a requirement for the Secretary of State for Health to ensure advocacy is available to children and young people who want to complain about NHS care (The Centre for Children and Young People’s Participation, 2016). All such measures have established formalised mechanisms of advocacy, or forms of institutional representation (Saward, 2006), therefore illustrating both practices of representing the dislocated subject or in this case children, to realise their rights, alongside exclusionary practices wherein formalised systems legitimising certain claims to representation exclude others.

**Availability of Advocacy**
Exploration of advocacy is predominantly focused on the provision of advocacy for children and young people involved in welfare services (Boylan and Ing, 2005; Dalrymple, 2005; Boylan and Braye, 2007; Pithouse and Crowley, 2007; Barnes, 2012). Other research exploring advocacy in the children’s sector considers mental health advocacy outcomes (Ridley et al., 2018), disabled children’s advocacy (Knight and Oliver, 2007), broader issues of social justice (Boylan et al., 2016) and an ethics of care (Barnes, 2012).

Formalised provision of advocacy within England and for whom is variable. In health and social care advocacy is an approach to enable marginalised and oppressed groups to have a voice (Dalrymple, 2004). However, access to advocacy has previously been described as ‘ad hoc’ (DfH, 2000), reliant on geography and finance (Atkinson, 1999). Research has indicated that age, level of need and disability and the entitlement to advocacy differs across LAs. Children placed out of borough, in residential homes, and secure units have limited access to advocacy services. Asylum seeking children were also seen to experience problems accessing advocacy support (Oliver et al., 2006).

**Advocacy as Transformative**

The benefit and transformative potential of advocacy is highlighted in a report by the Children’s Commissioner for England (2016) on the impact and outcomes of independent advocacy for children and young people. Advocacy was seen to contribute to identifying gaps in service provision, development of policy and made services more accountable, including organisational culture change through involving children and young people and being more responsive and child-centred (Children’s Commissioner, 2016). Advocacy has influenced changes to law through the statutory provision of mental health advocates (Ridley et al., 2019) and the overall promotion of children’s political, social and civil rights and social justice (Boylan and Dalrymple, 2011). It is reported that children and young people who access independent advocacy in the UK are overall satisfied with the service (Children’s Commissioner, 2016) and perceived advocates to be working to give them a voice (Oliver et al., 2006). While evidence points to positive outcomes and impact of advocacy, there is a dearth of research examining the impact of advocacy (Ridley et al., 2019).

**Advocacy and the Special Educational Needs and Disability**

Most relevant to this doctoral thesis is how advocacy is represented in SEND policy, with children and young people with SEND being the group EPs are most likely to support. The most relevant guidance is the Special Educational Needs and Disability Code of Practice 2015 (hereafter the CoP) (DfE and DfH, 2015) as it outlines
duties and expectations of support for children with SEND and is part of the legislative governance of educational psychology practice.

I drew attention to perspectives on how the the CoP, while making some commitments to the UNCR (DfE and DfH, 2015) is said to have missed an opportunity to incorporate a language of rights (Sayers, 2018). Arguably availability of advocacy is essential in SEND with some recent data identifying that challenges continue to exist within the provision of SEN with 46% of local area SEN inspections being provided with a statement of action (Ofsted, 2018). In 2017, the Local Government and Social Care Ombudsman reported following the implementation of CoP complaints and enquiries doubled between 2014/15 and 2015/16, with nearly 80% of its first one hundred investigations upheld compared to the 53% average (Local Government and Social Care Ombudsman, 2017). However, despite these stark findings regarding difficulties accessing support for children and young people with SEND, this doctoral research identified that advocacy provision for SEND remains limited compared to other elements of welfare services. In this sense children and young people remain the subaltern as within their social condition are unable to speak for themselves (Spivak, 1994).

The statutory provision for independent advocacy for children and young people with SEND is outlined in the CoP where it states:

Advocacy should be provided where necessary. Local authorities must provide independent advocacy for young people undergoing transition assessments, provided certain conditions are met (see section 67 of the Care Act 2014) (p.33).

The use of the term ‘must’ denotes a statutory requirement under primary legislation, regulations or case law’ (DfE and DfH, 2015; p.12). Hence, the above statement necessitates a statutory obligation (and illocutionary speech act) to provide an independent advocate for young people subject to transition assessments for adult services and undergoing a capacity assessment. Therefore, children and young people outside of this category, where no illocutionary performative is in operation, could be advised to have advocacy but are reliant on self-advocacy, parental advocacy, peer advocacy or advocacy but another professional. Acts of advocacy remain perlucutionary, which can both be productive or risk being delegitimised.

For instance, the CoP states:

Local authorities should ensure that children and young people have the support they need (for example, advocates) to participate fully in this planning and make decisions (p.125) [emphasis added].

The above statement outlines how children and young people should be provided advocates if necessary. The term ‘should’ has relevance in policy terms as it represents what is advised and is not indicative of a statutory commitment. Therefore, evaluation of whether advocacy is required lies with the LA. The CoP continue with
what could be read as a limited commitment to advocacy outlining how Local Authorities (LAs) will establish processes to provide advocacy ‘where necessary’ (p.251), ‘young people with learning difficulties..., may need advocacy’ (p.251) and LAs ‘should consider’ whether some young people may require support in expressing their views’ (p.22) [emphasis added]. This reflects broad stroke commitments not underpinned by statutory requirements, with children and young people not afforded legitimised advocacy services. The LA is placed in a position of authority to ‘consider’ and construct how the child is positioned with regards to the claims made and how they perceive a child’s needs. Thus, these statements of advocacy construct a discourse that is only performatively constituted in that a commitment to advocacy is expressed but fails to account for structural and professional constituting discourses, such as need, that may undermine efforts to provide advocacy to children and young people, notwithstanding the lack of statutory duties to provide advocacy.

Furthermore, the CoP also rejects the idea of independent advocacy in most cases outlining how support ‘could be a family member or professional’ (DfE and DfH, 2015; p.22), potentially compromising the representation of children’s views and weakening challenge to the LA with the use of a professional allowing for conflicts between professional roles and provision of advocacy. The role of parents and family as advocates is an important one, which cannot be fully explored in this doctoral research. For children and young people with SEND the role of the advocate is largely and expectedly the responsibility of the parent. Parents often take on advocacy roles for their children, though advocacy has been described within the SEN tribunal processes as demanding, stressful but also empowering when advocating for their child’s rights (Runswick-Cole, 2007; Runswick-Cole and Ryan, 2019), though with a risk of being viewed as the ‘pushy parent’ (Woods, 1998). Even recently, Woods et al. (2018) identified that SENCOs still held negative views regarding the role of parental advocacy. Walsh (2017), in a study on children and young people’s involvement in mediation during EHCP assessments, discusses how children and young people’s views can different from their parents. This is not to be against parental advocacy, which evidently is important but in times where there is resistance to parental views then advocacy may have a place in providing information and securing rights regarding SEND provision.

Advocacy in Educational Psychology Governance

Chapter 4 introduced educational psychology governing documents, with a review identifying how commitments to the UNCRC could be strengthened. Review of educational psychology governing documents suggests this also applies to advocacy practice. The advocacy role for children and young people it is not demarcated within educational psychology governing documents (see British Psychological Society - Division of Educational and Child Psychology, 2002; British Psychological Society, 2015; British Psychological Society, 2018; Health and Care Professions Council, 2016), though the BPS Practice Guidelines (2017) recognise how
psychologists hold multiple roles and reference to one of those being an advocate. Nevertheless, how advocacy is conceptualised within the educational psychology context in England remains undefined. In contrast, the National Association of School Psychologists (NASP) in the USA outline in their Principles for Professional Ethics (NASP, 2010) the need to be ‘respecting the rights and dignity of all, engaging in advocacy, and ethical responsibilities to children and youth, schools, families, and society. NASP practice guidelines also emphasize social justice and the role of advocacy for school psychologists’ (Nastasi and Naser, 2014).

Advocacy is strongly linked to principles of social justice (Boylan et al., 2016; Boylan and Dalrymple, 2009) and, in the UK, is underpinned and informed by the UNCRC with advocacy mechanism in ensuring policies and practices uphold children and young people’s rights (Boylan and Dalrymple, 2009). Thus, sanctioning of the UNCRC and commitment to child rights concerns in professional standards indicate a shared obligation to children’s rights principles in professional practice and advocacy. Not pertaining to the specificity of child rights in standards restricts understanding and enactment thus establishing a requirement for detailed guidance (Nastasi and Naser, 2014).

I stated earlier how conflicts could arise between professional roles and being an advocate. In the remainder of this chapter I will discuss the role of the EP, advocates and advocacy. In my experience of engaging with EPs in this doctoral research and in my own professional practice, EPs have positioned themselves and identified with being an advocate.

**Advocacy Practice in Educational Psychology – A brief review of the literature**

Despite the absence of the discourse of advocacy in professional documentation, there is a stronger identification with advocacy within the professional research field, where it draws on an advocacy discourse, positioning EPs as being an advocate. Advocacy as a discrete function is referred to as being part of the role of the EP (Greig et al., 2014; Harding and Atkinson, 2009; Nastasi and Naser, 2014; Wernham, 2020). Likewise, Schulze et al. (2018) formed a relationship between how educational psychologists understand social justice to be about advocacy, non-discriminatory practice and fairness, with a social justice agenda being central to the educational psychology profession.

EPs have described their role as ‘engaging with, listening to, understanding and advocating for the young is the everyday bread and butter of our profession’ (Greig et al., 2014; p.7). The views and voice of children and young people are seen as central to the EP role with ‘eliciting’, ‘recording’ and ‘advocacy’ and ‘advocating’ being demarcated as part of the activity of an EP (see Hammond, 2013; Harding and Atkinson, 2009), though with little differentiation between participatory practice, advocacy, listening to children and giving their views due weight. Similarly, others have draws attention to EPs and other SEN professionals in advocating for
participation (see Davie & Galloway, 2012; Norwich et al., 2006b) and thus emphasising how working to gain the child’s perspective and record their views continues to be a core activity of EP’s practice (see Gersch et al., 1993; Norwich et al., 2006). In describing advocacy practice, Squires et al. (2007) claim EPs can advocate for children with schools as ‘EPs listen to parents more than other agencies’ [emphasis added] (p.354), though arguably this describes advocating for parents not children.

Nevertheless, how advocacy is achieved and understood as a practice in educational psychology remains unexplored. This has particular relevance due to the relationship between children’s advocacy and ensuring the rights of children and young people, and therefore, the ways in which EPs narrate their knowledge of advocacy is related to exploring how they account their understanding and enactment of the UNCRC. EPs articulate their role as being one of an advocate, however, this needs to be considered within the context and remit of their role in the assessment of support for children and young people with special educational needs and/or a disability.

**Discourses of Advocacy in Educational Psychology Practice**

In narrating how EPs understood and enacted advocacy in their practice, EPs drew on a broad set of discourses, including children’s voice and views. Practices identified ranged from particular skill sets, the role of the advocate and how EPs represent children and young people. Nevertheless, advocacy, is intrinsically linked to rights, thus, how EPs consider advocacy in relation to their rights informed practice will be explored.

**Skills and Knowledge**

To begin with it is important to start to identify what discourses EPs draw upon in defining advocacy.

This EP outlined how an advocate has:

> knowledge or skills a person doesn’t have, so in a legal system you may have an advocate who understands the legal system and terminology and the implications of certain legal positions and they can then advocate for someone who has to enter that space, who doesn’t have the training and knowledge, and I suppose I would see advocacy as – the SEN system being quite a legalistic system in some ways in that certain words have particular meanings that have particular systematic responses like resources and you might, children and young people or their parents might want an advocate to help them understand that system and articulate to that system so that’s what I kind of see advocacy as being. (James)
James identifies knowledge and skills as an aspect of advocacy, elevating the status of an advocate to someone who needs and has certain knowledge and skills. James continues to references a need for someone ‘who understands the legal system and terminology’, positioning an advocate as that individual. Situating advocacy in this way draws on certain definitions of advocacy, which refer more to a legal advocate or lawyer. In some respects, the link to legal knowledge is representative of people may be in greater need of advocacy when there is an intersection between axis of vulnerability and disadvantage and the legal system (Marchetti, 2014). One clear example would be asylum seekers who legal knowledge would be undoubtedly a prerequisite for the provision of advocacy.

James implies an advocate can act as bridge for someone who ‘has to enter that space’, implying advocacy can act as a mechanism for those wanting to participate in systems that seek to exclude. James makes reference to ‘terminology’ and how ‘certain words have particular meanings that have particular systematic responses’ bringing into view how institutions mobilise language and practices in establishing institutional discourse which can have exclusionary effects (Reeves et al., 2020; Wodak, 2006), suggesting that advocacy can be required to navigate this.

This has particular relevance with regard to the SEND system, which James points to, identifying how children, young people or their parents may require an advocate to ‘help them understand’ that system. The focus of the CoP is on partnership and co-production with children, young people and parents (DfE and DfH, 2015), therefore, advocacy could have a role in achieving this, particularly in supporting children and young people to have a say in decisions. On the contrary, the requirement for advocacy suggests children, young people and families are still on the outside of the planning for educational support for children and young people with SEND.

Consequently, this suggests that in the absence of advocacy and knowledge, understanding could be lacking, illustrating the endemic nature of institutional practices that exclude and subjugate. In this sense advocacy is positioned as a mediating practice to connect different spaces. This raises the question as to why certain spaces are not ensuring that their institutional talk is understood, also highlighting the lack of attention to the wider scope of the UNCRC which is to ensure children and young people have knowledge to participate (see UNCRC Article 17).

**Advocacy as voice**

The strength of voice and views as a discourse, as discussed in Chapter 6, remained in EPs accounts of advocacy practice and their position as advocates. Advocacy intersects with participation, as a mechanism to
enable children and young people to participate in decisions, thus it is unsurprising that ‘voice’ found its way into the advocacy discourse.

Specifically, EPs drew on discourses of voice in describing advocacy and stated:

_I suppose immediately it makes me think of the term marginalised voices, bring those, amplifying those I suppose and representing them and bringing those to the table._ (Michael)

Advocacy is spoken of as a practice to address the marginalisation of certain voices and amplify these voices. Typically, advocacy is perceived as a way to speak up for certain groups (Boylan et al., 2016) and to ‘give voice’ (Bateman, 1995). Therefore, ‘amplifying’ voices can be seen as way of bringing forwards lesser known narratives and provide a counter-narrative that resists the positioning of a group or individual as a docile body (Foucault, 1975 D+P). Thus, advocacy is a way to promote the voice of silenced people.

Voice is juxtaposed with ‘marginalised’, defined as ‘the act of treating someone or something as if they are not important’ (Cambridge Dictionary, 2020). The ‘amplifying marginalised voices’ suggests a recognition by EPs of a need to place greater importance on those voices.

Nevertheless, the requirement of advocacy for marginalised people also implicitly positions children and young people as both marginalised in society and to EPs. The very nature of the EPs positioning themselves as addressing marginalising practices suggests EPs have yet to bring children and young people in as active and equal partners able to self-advocate.

Paradoxically, Michael refers to how voices will be amplified by ‘bringing those to the table’. Bringing diverse voices to the table may challenge dominant adult narratives. However, by bringing just the voice to the table, the child or young person behind the voice could still be excluded (arguably, I am unable to comment on the child or young person’s choice in this). Bell hooks (1989) ‘come to voice’, differentiates to just bringing of voice. Hooks (1994) identifies a difference between voice, where it is assumed that everyone’s words will be seen as equal and valuable compared to a more complex understanding where spaces are carved out so all voices can be heard and people subjects speak freely. Coming to voice is where individuals and groups are provided the opportunity to articulate and express their own experiences. Hence, the bringing of voice without the person does not provide opportunity for empowerment but maintains the subjugated and marginalised status of the child or young person. By limiting advocacy to voice it adopts a perlocutionary performative where how that voice is interpreted lies in the listener (Kissine, 2008).

Representing
Alongside voice, advocacy is seen as ‘representing’ children and young people, a discourse deployed by EPs in describing advocacy:

EPs stated:

*Speak on behalf of a person or group.* (Michael)

*I suppose I understand an advocate as I think you can have LA advocates who speak and champion a young person so an advocate is someone who speaks on behalf of someone else.* (James)

This conceptualisation of advocacy, where you speak on behalf of another to represent them characterises some definitions of advocacy (Bateman, 2000), though this implies that the person or group needs someone to speak on their behalf. This somewhat aligns with what is defined as ‘passive’ advocacy where children are still viewed as needing protection and someone speaks their behalf over active advocacy where children or young person are enabled to speak up for themselves (Hodgson, 1995; Jenkins, 1995). More active forms of advocacy aimed at empowerment and developing independence resist more protectionist views of children and young people (Boylan and Dalrymple, 2009). More passive forms of advocacy risk negating empowerment limiting the development of self-advocacy, maintaining their subjugated status.

Michael, in the earlier extract, considers advocacy as a way of ‘representing’ children and young people, rather than bringing them into the field of practice. However, as noted by Holzscheiter (2016), representation can have an exclusionary effect where boundaries between legitimate and illegitimate actors are maintained. Hence, the absent subject or group retains its subaltern status wherein they cannot represent themselves (see Spivak, 1985).

Continuing with the position of advocacy as a form of representation, EPs discuss how this representation occurs:

*I think advocacy is about that as well. I think in practice terms it’s about making clear whether making clear you are representing the child verbatim or if you’re putting in a level of interpretation about what they said and what it might mean.* (Thomas)

Thomas reflects that there is an element of advocacy where you represent ‘the child verbatim’. This is an important point to draw attention to as advocacy practice standards direct how efforts should be made to closely represent what a child or young person says and follow their instructions where:
The child or young person leads the advocacy process. The advocate acts only upon his/her express permission and instructions, even when these are not the advocate’s view of the child or young person’s best interests. (DoH, 2002; p3)

This illustrates an important aspect of advocacy practice where advocates are required to accept that they may be advocating for something that they believe is against the child’s best interest. Therefore, what is meant by ‘putting a level of interpretation’ on what is said needs careful consideration as not to detract from the original meaning.

Being directed by the child you are working for is a key aspect of advocacy practice and EPs, in their role within LAs and schools need to remain acutely aware of this to ensure that advocacy practice by any EP is grounded in what a child or young person is saying.

Another EP, stated:

I guess I keep it at the centre by being their advocate. So whenever I talk, I’m very clear when I’m feeding back, in my reports, I will start the report to the young person, that’s not always the case depending on the needs of the young person but, so when I’m talking through my reports and feedback it’s always centred around them. (John)

The above account, characterises how EPs work to keep children’s views central, but how this can be conflated with an advocacy role. For instance, John is communicating with a young person, but their needs is mediating how that advocacy occurs. Equally, the role of John has been assessment of needs, rather than speaking on behalf of the young person.

**Legitimacy**

How representation occurs within advocacy also speaks to the legitimacy of the advocacy role, or indeed who has authorised the advocate to speak. A key aspect of being an advocate is related to who has defined that role and appointed you, with advocacy guidance stating this should be child-led (National Advocacy Standards, 2002).

The below vignette is taken from an account by an EP interviewed for this doctoral research and reflects a number of discourses constituting advocacy. The account represents an EP’s recall of being asked to advocate, reflecting the possibilities for advocacy in EP practice, but also the challenges EPs may encounter.
In some instances I’ve been asked ‘can you advocate for this child’ and you go and do some advocacy work, so not particularly case work, not making hypotheses, checking things out and doing assessment, but you know, just go and see what sense this child is making of this situation and feedback.

This young person was placed out of borough\textsuperscript{11} so it was particularly important that somebody had a strong advocacy role for this youngster. They were living far away with lots of the professionals involved thinking they were best placed there for their own safety, but there were a lot of downsides to her being far away. The virtual school head\textsuperscript{12} wasn’t entirely sure that everybody had thought this through – they though phew they’re safe now. I think she saw the EP as the person best placed to understand the advocacy role needed. This was about getting this child’s views of only what is happening at the moment but also presenting the possible options and getting her views on those in order to feed back in.

It then became apparent when I met the youngster that somebody else had referred the child to the Local Authority rights and advice for some advocacy so then I said ‘oh well it needs to be either or and not both of us’ so then I kind of liaised with that person and we decided whether it would be her or me.

(Eleanor)

The above account draws on several aspects of advocacy important in considering if it is possible to take on an advocacy role, demonstrating how being an advocate requires detailed consideration of the complexities of advocacy.

\textit{Advocacy not psychology}

Eleanor begins with explaining how she has been asked to advocate for a child, demonstrating the defined role of advocacy, separate to other professional practice. This indicates how in this scenario the requirement for advocacy as having a distinct remit was considered in affording the status to an EP.

This differentiation of the EP’s role in relation to advocacy illustrates how Eleanor has considered the structural and materialist constraints in advocating for children and young people, with Eleanor recognising adopting the advocacy role entails relinquishing the EP role.

\textit{Legitimising the role of the advocate}

\textsuperscript{11} A borough is a Local Authority area, or sometimes part of a Local Authority area. Children in care are the responsibility of the Local Authority in which they live. Children in care can be placed to live in foster care or residential care outside of the Local Authority, which is responsible for them.

\textsuperscript{12} Each LA will have a virtual school to track the educational attainment of all children in care from that borough.
Nevertheless, the practice narrated by Eleanor still risks positioning the child as ‘other’. Though Eleanor does not specify, it appears a professional colleagues approached Eleanor regarding advocacy, where Eleanor was asked ‘can you advocate for this child’ as opposed to the child requesting this themselves. The child’s views on wanting or needing an advocate are not explicitly discussed. However, Eleanor references later in the account how the child was referred to LA rights and advice\(^{13}\) for advocacy. The referral process is not detailed, however, LA commissioned children’s rights services work on the principle of the child agreeing to the referral and involvement of the advocate, as outlined in the National Standards, which denotes advocacy is child or young person led (DFES, 2002 – see Appendix J). Similarly, in the example provided by Eleanor, the decision regarding who adopted the advocacy role was described as taking place between the children’s rights advocate and Eleanor, the child ‘othered’ in this process, excluded from the decision.

In some respects the scenario outlined by Eleanor is indicative of wider institutional issues where services and referral mechanisms are not available to children and young people and remain adult led. Paradoxically, undertaking a referral on behalf of a child or young person could represent a practice that is productive and performative as it widens the discursive space, meaning the introduction of an advocacy role may enable the development of rights informed practice or a shift in the dominant narrative through the incorporation of the advocate’s perspective.

**Educational psychologists – ‘best placed’**

In the above vignette, Eleanor details how another views:

> the EP as the person best placed to understand the advocacy role needed. (Eleanor)

Eleanor follows this up with an account of what advocacy is and states:

> This was about getting this child’s views of only what is happening at the moment but also presenting the possible options and getting her views on those in order to feed back in. (Eleanor)

How an EP is ‘best placed’ to be an advocate is not explored, Eleanor not accounting for this claim. While Eleanor narrated how advocacy may need to be differentiated from normal educational psychology practice, why EPs are better placed than others to advocate is not explicated.

Eleanor identifies what the advocacy practice might entail with regard to getting the child’s views and feeding those back in. This established a tacit assumption that an EPs perceived skills in establishing the views of

\(^{13}\) Local Authorities have a statutory obligation to provide children’s rights advocacy to children in care.
children and young people could underpin the belief that the EP is best placed (though not to discount this could be also due to Eleanor’s skills).

However, in this way, being ‘best placed’ to advocate takes on a trope like form, performatively constructing the EP as an advocate. However, this is based on preferred practice of establishing the views of children and young people (Gersh et al., 1993; Hammond, 2013; Harding and Atkinson, 2009), but not considering how an EP’s role is situated within other discursive formations. EPs, throughout their accounts, drew extensively on discourse focused on establishing the needs of children and young people, with recognition of the ‘ethical dilemmas’ and working in the ‘swampy lowlands of practice’ (Thomas) (Chapter 5 – Part 2).

How EPs are placed in terms of advocacy provision also relates to how EPs have positioned themselves in relation to their governing institutions. A particularly contentious relationship are how EPs are commissioned by LAs to give psychological advice within the EHCP process and commissioned by schools to deliver services. EPs operating within these marketised relationships gives rise to questions regarding how they can provide advocacy that may conflict with the organisations they also provide advice for regarding children’s needs.

While children’s rights do arise from children’s needs (Woodhouse, 1994), the tension is indicative of wider debates regarding the bias towards protective rights over participation rights (Warrington and Larkins, 2019). EP practice lends itself to the realisation of protective and provision rights, through their role in identifying SEND and ensuring children and young people with SEND can access education. This is not to say that EPs do not work in participatory frameworks, however, advocacy requires relinquishing working in a child’s best interest to focus on only representing children’s views. A caveat here is that in incorporating children’s views you are more likely to work in their best interest (Lansdown, 2011; Warrington and Larkins, 2019), however, an advocate cannot assume this.

*Educational Psychologists – not quite advocates*

In contrast James does not view the EP as an advocate and stated:

> I’m not sure EPs quite are that advocate. I don’t think I would describe EPs as advocates but I do think sometimes they do advocate for children so you might find yourself in a particular case in that situation of advocacy but I don’t think that is solely your role as someone else who might be an advocate and that’s their whole role and get involved and champion a person. (James)

James clearly states that EPs are not ‘that advocate’, making a distinction between being an advocate and undertaking advocacy practice in identifying how EPs sometimes advocate for children. While not explicit, James is drawing attention to how EPs are not employed to advocate, their central remit being to provide
psychological advice, to identify the educational support needs of children and young people (BPS, 2018). EPs are clear that gathering the views of children and young people is integral to their role (Gersh et al., 1993; Hammond, 2013; Harding and Atkinson, 2009), however, advocacy extends beyond establishing views and championing those views over other perspectives, including the EPs own views on need.

The challenge of EPs undertaking advocacy is highlighted further by Thomas who stated:

_Barriers to advocacy? Our statutory role sometimes. When we are doing a statutory report our client is essentially the LA. They want to know what they are going to provide in terms of provision. They are not necessarily what they are asking us tell us what the young person thinks. The young person’s views are there – they’re in the Code of Practice – the EHC must have reference to those but really it’s still producing an EHC, it’s a bureaucratic process that lasts 5 months and ends up with a document._ (Thomas)

Thomas is explicit how a barrier to advocacy is the statutory role, supporting James’ account above. The EP statutory duties are typically undertaken either as an LA employee or through commission by a LA, where the ‘client is essentially the LA’ to provide psychological advice for an EHCP assessment. Thomas clearly articulates that the ‘young person’s views are there’, indeed a comprehensive assessment would incorporate a child or young person’s perspective on the presenting issues, alongside the EP’s evaluation of needs, gathering information from a range of sources, yet this does not fall under the remit of advocacy. An EP could take up a position to advocate for what a child needs in a school environment, in countering deficit constructions of children’s SEND (Goodfellow and Burman, 2019), but the EP would need to determine if how to navigate this role, particularly if they are not entirely in line with what the child or young person is saying they want. How EPs navigate these barriers could be progressed through evaluating situations in line with the National Advocacy Standards (DfES, 2004), which specify that advocates work ‘exclusively’ for the child, which is often not the case for EPs.

Building on the above, another EP narrated how EPs are expected to work to different agendas and balance the different needs of different people. James stated:

_the LA has agreed the request and the educational psychologist then has to produce advice you then draw on your previous involvement and I think at that point you’re working for the LA and the LA is paying you to produce psychological advice and you have to produce the best advice you can in the timeframe you’ve been given. And you would have to come to a view on the parent’s views and what they want and what they see as the concerns and the problems and any understanding you can gain from working with the child and understanding where the child is at._ (James)
Here the EP is articulating their role in producing psychological advice, and as such performing how their role is constituted by the policy discourse. This EP states that he ‘has to produce advice’. The production of such advice, while likely in the child’s best interests, does not necessarily constitute advocacy, though EPs aim to record the voice of the child in report writing (Harding and Atkinson, 2009). As I drew attention to a little earlier, situations may arise where EPs could undertake advocacy practice, for instance a child outlining the challenges they experience in school with a particular style of teaching or doing group work, and the EP would have the opportunity to include this in their psychological advice, and thus advocate for something the child has requested. Nevertheless, this would go hand in hand with the EP’s recommendations, which might not be representative of what the child has asked for or their views on a particular issue. Therefore, EPs arguably have space and opportunity to shift the narrative with regard to children and young people’s needs and ensure children’s views are given due weight in any decisions or conclusions reached.

Conclusion

The extracts selected from the accounts by EPs illustrate the differentiation needed between advocacy, representing a child’s view and solely championing children’s views, not an amalgamation of perspectives from a range of stakeholders. For an EP, this is interlinked within their professional remit where they typically work with LA$s, subject to the governing discourses of multiple partners and stakeholders. Therefore, EPs must exercise caution in identifying themselves as an advocate. As discussed by Fox (2018) an advocate’s role should be distinct from others within the setting and not have an alternative agenda within the meeting, as an advocate must be concerned with ensuring the child or young person’s views are heard. This is particularly difficult in a traded context where EPs will be required to respond to the demands of different commissioning partners, typically schools who are their ‘customers’. Educational psychology has made efforts to differentiate between ‘customer’ and ‘client’, said to be through the application of psychological skills, knowledge and understanding and the use of consultation, assessment, intervention, research and training (Fallon et al., 2010), which has according to Woods (2014b) differentiated the client as the child or family, with other stakeholders commissioning or contracting EP provision being the ‘customer’. Thus, the EP contribution is reliant on the commissioning context (Lee & Woods, 2017).

However, this delineating of boundaries in terms of relationships with children, young people, their families and other stakeholders does not go far enough to demarcate the EP role as one of advocacy given their obligations to statutory processes. One EP was clear that in the provision of psychological advice the client was the LA.
The complex role of the EP includes work on an individual level to address a child or young person’s social, emotional or behavioural needs (Farrell et al., 2006), alongside addressing their learning and living environment, reporting on strengths, needs, proposed outcomes and necessary provision to act in the best interest of the child or young person (BPS, 2015). EPs evidently could shift the narrative around a child and young person’s needs, but their work when undertaking LA commissions or statutory processes would not be exclusively representing the views of child or young person, a central aspect of advocacy. Through interrogating how EPs balance children’s needs with rights may enable EPs to either advocate within certain circumstances, or to ensure that children’s rights are upheld.

EPs do hold social justice principles central to their practice (Schulze et al., 2018; Wernhan, 2019), thus advocacy being deployed in the discourse could be said to be intrinsically linked to EPs professional values and ethics. Nevertheless, advocacy is a distinct practice, with particular requirements with regard to legal and rights based knowledge and the obligation to work solely for the child or young person. In deploying the term advocacy it risks becoming performatively constituted. The performative utterance ‘to advocate’ has become institutionalised across time (Powell and Gilbert, 2007), yet the lack of theorisation of the term advocacy in educational psychology may construct EPs as advocates, but may fail to perform advocacy practice. Advocacy becomes what Spivak calls Vertretung in that EPs become the representative of the dislocated subject, yet the child’s interests are subsumed by the EPs interests (or assessment of needs) with children receiving no formalised access to advocacy. In this sense the practice of advocacy remains only Darstellung or a rhetoric of tropology, which risks maintaining systems of exclusion where children and people’s views remain subjugated.
Chapter 9: Discourses of Consent and Co-Research in exploring the understanding and enactment of Children’s Rights in Educational Psychology

Throughout this doctoral research EPs have drawn on a range of discourses, including consultation, voice and views to explore and account for their understanding and enactment of the UNCRC. In exploring how EPs account for their understanding and enactment of the UNCRC, specifically through mechanisms of participation, the analysis has drawn on practices EPs consider to be participatory, but also challenges and tensions at play which create barriers for EPs in realising children’s rights.

However, in seeking not to replicate practices that limit participation to only views and voice, I identified practices indicative of participation, such as consent, not always considered within participatory frameworks. Consent was identified through initial observations with EPs about their practice and my own knowledge of LA practices, where parental consent is typically privileged. Additionally, a review of EP governing documents identified how consent was considered consent through participatory principles (Chapter 4).

Exploring Discourses of Consent

Principles and practices of consent traverse both practice and research contexts, where EPs, as scientist-practitioners, are informed by and informing research. This chapter will explore mechanisms of consent in practice, also drawing on how consent and children’s participation is more broadly constituted in what can be considered co-research and child and young person-led research. EPs narrated and detailed their reflections on how they negotiated consent with children and young people. The complex intersections of consent processes narrated by EPs epitomised the ‘swampy lowlands’ of practice where EPs are required to address ethical dilemmas in ensuring the rights of children and young people (see Chapter 5).

These practices of consent and research overlap and intersect, and constitute and are constituted by children’s rights. These practices will be explored drawing on children’s rights literature and methodological approaches that attend to how children and young people are positioned in research.

Consent Defined

Consent is both a noun, giving ‘permission or agreement’, and a verb where you ‘agree to do something, or to allow someone to do something’ (Cambridge Dictionary, 2020), enabling individuals to say yes or no to acts that have a personal effect on them (Van der Hof, 2016). Thus, consent is often presumed to be voluntary and free of coercion (Miller and Bell, 2014), with voluntary informed consent being a complex process set out in
ethical codes outlining the receipt of information regarding involvement and withdrawal (Bourke and Loveridge, 2014). However, the assumption of voluntary consent does not account for the complex dynamics of power that intersect in the process of consent, hence intricately tying consent to questions of ethics (Miller and Bell, 2014).

Practices of consent are very much part of people’s daily lives where individuals say yes or no to acts that have a personal effect on them (Van der Hof, 2016). However, Miller and Boulton (2007) suggest the improved capacity to store, access and connect information and data is a threat to individual privacy and autonomy. Consent remains ‘contentious and difficult to navigate’ (Whittington, 2016; p.206), with the rights and capacity of children and young people to consent to sexual, medical and research coming ‘in and out of focus, usually in response to controversy and change’ (ibid; p.206). Consent can be seen as ‘a manifestation of an individual’s right of freedom under the law, such as human rights law’ (Van der Hof, 2016; p.110), alongside the influence of the UNCRC’s focus on children and young people’s views being given due weight in decision making, particularly in administrative and judicial proceedings (Alderson, 2017). Nevertheless, the right to participate in decisions is often limited by protective policies that aim to eschew risk over focusing on the views of children and young people (Tisdall, 2017). Such discourses of risk lead to parental consent being foregrounded (Coyne, 2010) with balancing rights to participation, through information, confidentiality and recognising capacity, and protection and duties to safeguard (Whittington, 2019). Accordingly, this warrants analysis and discussion in relation to children’s rights and their participation in decision making.

In this way consent is a discursive formation of its own incorporating multiple and intersecting discourses that traverse children’s capability and competence (Alderson and Goodwin, 1993; Perera, 2008), parental consent (Alderson, 2017; Jasmonitaite and De Hert, 2015; Pickles, 2019), children’s research rights (Bourke and Loveridge, 2014; Coyne, 2010; Hurley and Underwood, 2002; Miller and Boulton, 2007; Whittington, 2019), consent’s legal status (Malm, 1996; van Der Hof, 2016), youth justice (Fergusson, 2007; Gillen, 2006), consent to health and medical procedures (Alderson, 2007; Alderson et al., 2006; Coyne et al., 2014); and sexual consent (Coy et al., 2013; Cense et al., 2018; Whittington, 2020) are amongst some of the arenas and discipline areas where the challenges around navigating consent are interrogated. While within each area there will be particular tensions and specific mediating factors, all are subject to how discourses of protection, competence and capability can determine perceived capacity to consent.

**Consent, the UNCRC and Children’s Rights**

Accordingly, consent is representative of a rights-based framework of possessing autonomy and control over an individual’s life in having freedom of choice, forming a challenge to more paternalistic perspectives of
protection (Van der Hof, 2016). Representing consent as a form of decision making is a departure and expansion of perceiving participatory practice as merely establishing a children’s views or voice. Nevertheless, consent being considered as an aspect of decision making subjects it to being constituted by UNCRC principles, such as best interests and welfare being the primary concern (Spencer, 2000) and tensions with children’s participatory rights (Tisdall, 2017). As I will come to discuss, children’s consent is not always privileged and can be overridden if their decision is not perceived to be in their best interest (Coyne and Harder, 2011; Elliston, 2007), thus mediated by discourses of capacity and maturity, subject to deficit discourses present in debates regarding children’s participation (Tisdall, 2017; Wyness, 2019). Hence, determining what is in a child’s best interest can result in ethical dilemmas (Spencer, 2000) and firmly sits within a ‘swampy lowland’ of practice.

**Consent - Historical background**

To understand how consent connects to children’s rights, it is important to first explore its historical background. The concept of consent is based in law, philosophy and politics (Alderson, 2012) with informed consent being grounded in ethical principles of respect for dignity and the value of all humans (Miller and Boulton, 2007). Consent is tied up within relationships of power with Miller and Boulton (2007) outlining how informed consent was introduced in efforts to protect people from exploitation and harm. For instance, the influential Nuremberg Code (Miller and Boulton, 2007) was created following the trials of Nazi atrocities in medical research and outlined the requirement for consent of human subjects being able to exert free choice, be provided with adequate information and not be subject to force or coercion (Alderson, 2012). Subsequently, forming many of our current research ethics practice, the Helsinki Standards were created after Thalidomide was used on pregnant women leading to their babies being born with tiny limbs due to insufficient testing of the medication. The led to an emphasis to the information needs of individual research subjects (Alderson, 2012) and the creation of codes of practice for the ethical conduct of research (Miller and Boulton, 2007) still seen to be in place today across health services and universities (Pickles, 2020).

**Children, Consent and the Law**

Practices of consent are not restricted to research contexts with rules and legal frameworks established to protect individuals across a range of contexts with ages of legal consent varying. For instance, criminal responsibility is currently age 10 (Gov.uk), age of sexual consent is age 16, with children under the age of 13 being seen as not being able to give consent (Sexual Offences Act 2003). The guidance regarding the age children and young people can consent to medical procedures relies on whether they are deemed Gillick competent (Alderson, 2007). The concept of ‘Gillick competence’ remains tenuous, representing similar
tensions between balancing a child’s best interest with their participatory rights. Gillick competence arose from a challenge in court by Victoria Gillick to her local health authority regarding her child being prescribed contraceptives without her knowledge. This was rejected and it was believed children under the age of 16, if deemed competent, were able to make decisions about contraception with young people aged 16 or 17 presumed competent to make decisions (Alderson, 2007; James, 2007). This decision also applies to broader healthcare decisions, though if a decision could lead to death or impairment this can be overruled in the Court of Protection (NHS, 2019), thus a child’s wishes can be overruled in determining their best interest. Nonetheless, Gillick can represent an enactment of the UNCRC’s Article 12 where children and young people have their views heard and given due weight depending on their age and maturity (UNICEF, 1989), facing familiar challenges where decisions are dependent on the evaluation of adults, mediated by discourse of capacity, deficit and ability. Nevertheless, though guidance allows for children’s consent to be prioritised under Gillick guidelines, it does not mean circumventing parental consent (Department for Health, 2001) and best practice is considered to be obtaining both child, parental or guardian consent (Coyne, 2010).

Consent to research characterises another discursive regime tied up within policy discourses and practice, mediated by beliefs and discourse surrounding a child’s right to participate in decision making. When considering consent in relation to involvement in research, complexities remain. Involvement of children in research is governed by ethical guidelines and procedures to ensure children are appropriately safeguarded (Coyne, 2010). Commonly research guidance advises seeking consent from parents, carers or guardians for children under the age of 16 (Pickles, 2020; Whittington, 2019). However, ambiguity prevails and legal issues around consent interact with views on competency, thus guidance on consent in research remains contentious. The NSPCC identify that children under 16 are unable to legally consent and therefore consent has to be sought from an adult parent or guardian (NSPCC, 2019). However, the law regarding research on children is ambiguous (McIntosh, 2000) with the NHS Health Research Authority stating it is only clinical trials for the investigation of medicinal products where children under the age of 16 are prohibited from giving consent, stating there ‘is no statute in England, Wales or Northern Ireland governing a child’s right to consent to take part in research other than a Clinical Trial of an Investigational Medicinal Product (CTIMP)’ (Health Research Authority, 2018). Similarly, research on sexual consent considered gaining parental consent for young people under 16 out of line with the operations of sexual health and education service provision that provides sexual health advice and contraception to under 16’s (Whittington, 2019). Such practices prevents the exclusion of under 16’s from participating in sensitive research where this is a social need due to unbalanced ethical frameworks (Pickles, 2020).

However, despite the debate consent in healthcare and research being focused on and advocating for those under 16 being considered competent to consent, other arenas see much younger children as being capable
of consent. For example, children in England are criminally responsible at age 10 (Gov.uk), seen to understand the difference between right and wrong (Gillen, 2006), thus ‘consent’ to any criminal activity they partake in. However, in demonstrating how policy ‘manifest some of the familiar disjunctures between the historical layers of their own discursive construction’ (Fergusson, 2007; p.190), assessment of capacity and maturity in determining criminal responsibility does not factor. Legislation in England removed the safeguard ‘Doli Incapax’ (Crime and Disorder Act 1998) for children aged 10-13 meaning their understanding of right and wrong is presumed and the prosecution are not required to evidence capability making a 10 year old child as equally responsible for criminal activity as an adult (Gillen, 2006). This contrasts with systems and rules, where in research a child is not viewed to be able to consent independently of parents (Brown et al., 2017) or sexual consent where children under 13 are deemed unable to consent (Sexual Offences Act 2003). Consequently, the need to protect communities from the negative effects of offending behaviour cannot be compensated by welfare needs (Gillen, 2006) countering a system of welfare seeking to keep children out of the criminal justice system in prioritising care, protection and the best interest of the child (Haydon and Scraton, 2009). Gillen (2006) goes onto discuss how the UN Committee on the Rights of the Child has recommended that the UK incorporate the UNCRC into its legislation and policies on youth justice, including the ‘United Nations Standard Minimum Rules for the Administration of Juvenile Justice (‘The Beijing Rules’’) (OHCHR, 1985), which argues that the age of criminal responsibility should not be set too low and should consider emotional, mental and intellectual maturity. The UNCRC specifies a need for a child-centred youth justice system that prioritises their best interests though it falls short of identifying the minimum age of criminal responsibility (Gillen, 2006).

The Committee on the Rights of the Child in their Concluding Observations (2016) and the Children’s Rights Alliance State of Children’s Rights Report (CRAE, 2018) identify the low age of criminal responsibility in the UK as a threat to children’s rights. In this case, children’s participation rights are seemingly held above their welfare rights. For instance, the application of certain rules and standards regarding consent represent a contradictory picture of the enactment of rights and illustrate contentious rationales in the varying political contexts and their deeply contradictory views that form the basis of policies that effect the rights children and young people are entitled to (Fergusson, 2007). Hence, indicating the socially constructed nature of consent (Miller and Boulton, 2007).

**Consent and Educational Psychology Policy Discourse**

So far consent has been discussed within the broader policy discourse, focusing on discontinuities of practice regarding how children and young people consent. How these discourses are represented in educational
psychology policy discourse will begin to illustrate how practices of consent are enacted and understood in relation to the UNCRC.

Expectedly, the British Psychological Society (BPS) (2017) Practice Guidelines outline a client’s right to choose if they receive psychological services, with a requirement to provide appropriate information to facilitate informed consent. These guidelines, do not differentiate between child and adult, specifying that children and young people, regardless of age, have a right to express their views and be involved in decisions, also setting out a requirement to gain informed consent. Also of significance is how the guidance links informed consent with Article 12 of the UNCRC, as discussed in Chapter 4. Thus, the BPS are subjecting the process of informed consent to the same regulation of practice as children’s participation in decision making. The statement of informed consent is regulated similarly to the UNCRC through children’s ‘evolving capabilities’, which is subject to being mediated by discourses of deficit and ability, alongside the UNCRC requirement for children to ‘contribute to decision-making’ (UNCRC, 1989).

Of significance, the BPS Practice Guidelines (BPS, 2017) states:

Any direction or guidance provided by parents or other caregivers must be ‘in accordance with the child’s evolving capabilities’ and support the ‘exercise by the child of his or her rights’. The onus is then on the adults to provide appropriate support to enable the child or young person to express their views and contribute to decision-making. (BPS, 2017; p.50)

The above statement is illustrative of the full scope of Article 12 of the UNCRC demonstrating a commitment and understanding in the educational psychology policy context of the UNCRC. Furthermore, it encompasses the series of Articles comprising participation such as 13 and 17.

In a particularly useful refuting of deficit-driven understandings the BPS guidance also acknowledges Gillick competence and states how psychologists should ‘discuss and agree how information is recorded and possibly shared with others with an awareness that young people who are ‘Gillick competent’ can consent to information not being shared with parents’ (BPS, 2017; p.50). The reference to Gillick can be seen to be a step towards realising children’s participatory rights.

EPs are also subject to the requirements of the LA context they are often based within. Children’s Services typically consider consent and confidentiality through the lens of balancing confidentiality with professional duty to safeguard and protect, stressing how concerns related to sharing information should not impede a child’s welfare (HM Government, 2018). This is illustrative of nation states’ responsibility to protect and act in a child’s best interest, privileging protection over children’s privacy and information rights and their right to
have their views given due weight in decision making. This is not to suggest that sharing of information should be prevented, as reports into child protection have highlighted discursive regimes that prioritised data privacy over sharing to a degree that it led to shortcomings in safeguarding, care and protection (Laming, 2009). However, this does not mean how children and young people are involved in consent and data sharing should remain unaddressed as this is indicative of how protection and participation rights are often juxtaposed to a degree that protection is used as a mechanism to circumvent participation (Warrington and Larkins, 2019).

**Educational Psychology Practice Discourses – practices of informed consent**

The above extract clearly outlines the practice of informed consent. EPs, as I will go on to discuss later in this chapter, adeptly navigate the meaning of informed consent. This is unsurprising given the prominence of the discourse of informed consent across professional, practice and research domains. EPs as scientist-practitioners (Maliphant et al., 2013; Miller and Frederickson, 2006), a psychologist who integrates being a clinician and researcher through contributing to practice through generating and drawing on empirical findings, theories or new treatments (Jones and Mehr, 2007), will be familiar with the processes and principles of informed consent both within practice and research. Nevertheless, while informed consent or consent generally is evident in the discourse, what is less clear is how informed consent is distributed throughout professional practice with children and young people.

EPs provided accounts of their understanding of consent processes and enactments of the policy discourses in practice, illustrating the complexities of consent with children and young people in the accounts of practice.

A number of EPs throughout this doctoral research discussed a range of activities undertaken to support children and young people to be more informed about the EP role and the aim of their work.

Eleanor narrated:

> And has some say over that because we have all this you know... like a spiel at the beginning of meeting a child where you talk about your role, your purpose being there, the length of your involvement, how many times you will be coming back to see them, are you going to see them today and you know how many breaks and all of that so you sort of set out the framework but also the confidentiality thing – what you can tell me that can remain confidential unless you’re going to come to any harm or unless we decide it would be useful and I often say I’ll come back to that because it might be because we think it will be useful to tell other people about what we’ve talked about because they might be able to help make some changes so framing it in that way so the youngster is clear so I guess that is consent that they’re making informed choices about what they tell you and what purpose that is for. (Eleanor)
Eleanor draws attention to ‘a spiel at the beginning of meeting a child where you talk about your role’. Eleanor narrates a process that includes explaining your role, purpose, remit, length and extent of involvement and confidentiality. The ‘spiel’ that Eleanor refers to is important as it is indicative of the wider remit of the participatory Articles of the UNCRC including Articles 12, 13 and 17 (Appendix A) (UNCRC, 1989). Article 17 in particular outlines a child’s right to information. Though this account is in relation to consent, what Eleanor is illustrating is how enabling children and young people to participate is beyond asking for their views and includes giving them a ‘spiel’ of information. Eleanor reflects back on her conceptualisation and states ‘I guess that is consent that they’re making informed choices about what they tell you and what purpose that is for’.

Eleanor has outlined the process she goes through when meeting a child and names this ‘consent’ and has explicitly linked this to making informed choices. Notably, Eleanor references some aspects of the process children and young people will experience when undergoing an educational psychology assessment or intervention. Likewise, the practice Eleanor describes encapsulates commonly understood definitions of informed consent and aligns with what is within educational psychology policy texts and broader research guidance discussed earlier in this Chapter. Such a recognition of explaining and providing information to children and young people is important in demonstrating how participating is more than the content of Article 12 and includes ensuring children and young people have the necessary information to participate as outlined in Article’s 13 and 17 of the UNCRC. Hence, Eleanor has described a process which enacts other UNCRC Articles that encapsulate children and young people’s participation rights, for instance Article 17, which specifies a child’s right to information appropriate to their age and ability (Lansdown, 2011).

**Talk**

Eleanor, in narrating her ‘spiel’, prioritises ‘talk’. While Eleanor, in other statements discussed methods such as ‘one-page profiles’, ‘talk’ in this extract was the dominant communication method. Eleanor narrated that ‘you talk’ and ‘we’ve talked’. This dominance of talk in Eleanor’s account reflects how educational psychology practice can be dominated by verbal interaction, or at least increased focus on verbal modes of communication. The role of EPs includes working with children and young people with social communication difficulties or sensory impairments, thus, Eleanor’s account could reflect a need for further exploration of the use of alternative forms of communication, particularly given that limited research is available regarding
methods to establish the views of children and young people who are non-verbal (Goldbart et al., 2014; Hill et al., 2016).

Focus on how talk dominates is crucial given how talk and verbal communication modes dominate in the school environment, which is the main context EPs will operate within. While, this is not to suggest that EPs do not adapt practice to meet children and young people’s communication needs, as I will come to discuss, emphasising the ongoing challenges and reliance on talk can only work to enhance how EPs build participatory practice. For instance, critiques of participatory practices identify that disabled children face a range of barriers in participating in decision making with information often not being designed specifically for disabled children and young people (Franklin and Sloper, 2009), potentially infringing upon their participation rights. Whilst research involving children and young people has grown, few research studies exist exploring the involvement of disabled young people as co-researchers or research leaders (Brady and Franklin, 2019) with challenges in establishing the views of children who do not communicate verbally being seen as a barrier (Hill et al., 2006). Research has identified a need to counter more dominant concepts of participation that privilege certain data and knowledge to establish broader participatory approaches in working with disabled children (Mitchell and Sloper, 2011), for instance, Hill et al. (2006) drew on observation methods for children who were unable to communicate verbally. Significantly it was identified that those who knew the child well and were attuned to their non-verbal communication were well positioned to in establishing the children’s views. This illustrates how in ensuring participatory rights EPs may need to expand their methods of practice in engaging children and young people with communication difficulties.

Co-construction and shared decision making

In the extract above Eleanor also places some control and autonomy in the child or young person. Eleanor states that ‘unless we decide’ and narrates the co-construction and process of shared decision making regarding of what will be communicated and what ‘will be useful to tell other people’. This positioning of the child or young person as a partner in the decision making reflects a different kind of ontology that focuses on children and young people as relational beings and counters more colonial and paternalistic practices where something is done to a child.

Parental Consent and Children’s Rights of Consent

Moving on from how informed consent is enacted, EPs also illustrated how consent is negotiated and enacted regarding normative practices that prioritise parental consent.

Another EP, Margaret, also reflected on the formal consent process that she undertakes, narrating that:
So what I do now in terms of consent with the young children, I meet with their parents or family and I have the referral from school which has to be signed by the family before I can work with them and then I meet with the family to explain what I’m doing and to hear from them personally what their issues are with the child and these are all sort of under 11s. And then that’s the first half hour and then I meet with the child and explain what you’re going to do together and I explain explicitly in terms of confidentiality and its boundaries and you say things to me if they’re little things then we don’t have to tell other people and if it’s anything bigger where you’re hurting yourself then I need to share that and is ok with you and I get an agreement on consent and I ask them if they’re happy to work with me and so far all have said yes. (Margaret)

Consent and young children

Margaret explicitly refers to what she does regarding consent with young children. Margaret states that ‘I meet with their parents or family and I have the referral from school which has to be signed by the family before I can work with them’. Arguably Margaret’s statement that she is meeting with the family could indicate a meeting with the whole family including the child or young person, however, Margaret qualifies this and states that she then meets with the child. Thus, demonstrating a prioritising and privileging of parental [or guardians/carers] consent.

The process Margaret describes, however, is a commonly accepted process across educational psychology services and schools where schools obtain permission from parents and carers for educational psychology involvement. However, this practice has a number of effects. Children being excluded from the consent process represents a regime of exclusion (Foucault, 1972; Hook, 2007) where children are not involved in the decision making and thus a decision is made about how they will be supported, who is involved and how information is shared without their knowledge or input. Typically, the inclusion of younger children in decision making is seen to present more challenges, largely due to their dependence on adults in the realisation of Article 12 (Lundy et al., 2011).

Specifically, the UN Committee on the Rights of the Child specifically advises the UK to focus attention on the participation of younger children (United Nations, 2016), with the General Comments Number 5 stating:

The Convention requires that children, including the very youngest children, be respected as persons in their own right. Young children should be recognized as active members of families, communities and societies, with their own concerns, interests and points of view. For the exercise of their rights, young children have particular requirements for physical nurturance, emotional care and sensitive guidance (United Nations, 2005; p.3).
Nevertheless, younger children are less likely to be involved in decision making (Clark, 2010; Lundy et al. 2011; Sinclair, 2004), with involvement and consent imbued with ethical and practical considerations that form a barrier to the participation of younger children (Mayne et al., 2017). Research has tended to focus on older children’s participation (Tisdall, 2016) with limited research available on how younger children are involved in participatory projects (Lundy et al., 2011). In a study where younger children were involved as co-researchers, Lundy et al. (2011) remind us that while younger children will undoubtedly not possess the same technical skills as adults, it is the role of the adult to guide children to be able to express their views and have their views taken into account, which is their right. However, within a context of limited exploration of younger children’s participation identifying empirical findings to support practice may present a challenge. Indeed, Theobald et al. (2011) identified that more research is needed to explore how younger children’s participation can be translated into the school environment.

Nonetheless, in making attempts to navigate consent Margaret accounted for how aspects of consent are explained to children. Margaret highlights the centrality of explaining the remit of data sharing in relation to confidentiality and safeguarding, echoing the practice of providing information to ensure informed consent described earlier by Eleanor. However, Margaret and Eleanor, and indeed any EP or practitioner, will need to play close attention to establishing how younger children have understood the different aspects and terms related to consent. Mayne et al. (2016; 2017) undertook studies drawing on a narrative approach, specifically using interactive non-fiction in navigating consent which allowed children to become part of and the teller of the story in developing their knowledge around consent. Similarly, while Margaret did not adopt this approach specifically, she did ask the child to consider the ‘small’ and the ‘big’ things and what might need to be shared. This entails the child positioning themselves in the situation (or story) and reflecting on what is small or big enough to be shared as a concern. This approach has echoes of social stories a popular approach used with children with autism (Gray and Garand, 1993; Leaf and Ferguson, 2017; Reynhout and Carter, 2006), also known to EPs (Ali and Frederickson, 2006). Such approaches, alongside other methods utilised by EPs, for example, personal profiles, may contribute to ensuring younger children understand the limits of confidentiality. This may present a way to balance protection with enabling children (and young people) to exercise agency over how their information is shared and distributed and to whom. This places the power with children and young people who then are in a position to regulate discourse and authorise who is to speak.

**Consent, Assent and Parental Consent**
How consent is navigated is not only dependent on how children and young people are constituted, but how they are positioned in relation to parental consent. Children’s authority to consent is intertwined with parental rights and mechanisms of assent.

Practices of consent intersect with both legal requirements to obtain parental consent, alongside constructions of children’s competence, for example, Gillick competence, which is not reliant on legal and age defined boundaries, but requires consideration of a child or young person’s competence to make a decision (see Alderson, 2007).

In exploring different practices of consent Eleanor stated:

There’s a difference between pre 16 and post 16? I don’t know if I’ve given it an awful lot of thought but except an awareness that pre-16 it’s about the child’s assent as the parent holds the right to the consent and post 16 it’s about the young person’s consent but there’s sort of this grey area about where you might get into Gillick competency. It’s not something that – it’s something I’ve given an awful lot of thought to. I don’t know if that’s just me or representative of the profession as a whole. It intersects with the mental capacity act as well. (Eleanor)

Parental Consent

In the above extract, Eleanor is referring to a discussion regarding the transfer of decision-making powers at age 16 as outlined in the CoP, previously discussed in this chapter and elsewhere in the thesis (see Chapter 4). Eleanor is apparently unaware of this regulation and enacted the ‘rule’ by identifying that pre-16 ‘the parent holds the right to the consent’. Firstly, Eleanor privileges age defined consent processes, enacting the policy discourse of the CoP, which specifies this age binary in determining how consent is gained, consequently excluding children from the consent process. Equally, the UNCRC is clear to respect parental duties and rights, providing they are working in a child’s best interest as outlined in Article’s 3 and 5 (UNICEF, 1989). Indeed, debates discussed in Chapter 7 around person-centred planning suggest that it is within a child’s best interest to involve whole families in decision making (Uniacke et al., 2018) with decision making being viewed as interconnect (Roche, 1999).

Nevertheless, mediating consent through age defined binaries could be seen as a rejection of Gillick competence where children are unable to establish themselves as competent to make a decision prior to a certain age. Paradoxically, children are seen as capable and competent much sooner within the criminal justice system (Gillen, 2006) calling into question the purpose of certain rules governing consent.

Assent and Consent – educational psychology practice
Eleanor used the term ‘assent’ in considering how children consent.

Alongside the extract above Eleanor also stated:

*certainly practice in the LA I work in there’s very much practice around children’s informed assent to EP work and producing one page profiles to introduce ourselves to the child and I don’t think we’ve actually got a policy around it but it has become very much the practice so that children are giving their informed assent to work with an EP.* (Eleanor)

In considering practices of assent and consent, the question is if ‘assent’ is significantly different to ‘consent’ and what this means for children’s rights? Eleanor identifies that it is ‘informed assent’ and as such it is unclear if there is a qualitative difference between informed consent and assent. Eleanor does not discuss the implications of a child’s dissent, though how EPs navigate children’s dissent (or lack of consent) was identified by Thomas earlier in Chapter 5 (Part 2) as a ‘swampy lowland of practice’ where EPs are required to balance addressing certain needs in realising certain rights, for instance, the right to education, at the expense of other rights, such as children’s consent.

The change in language, where for children the term ‘assent’ is used signifies a difference than the implied full ‘consent’ sought from parents, guardians and carers. The use of ‘assent’ provides a particular positioning of the child as less than due to being afforded the right to give full consent. In using both terms ‘consent’ and ‘assent’ this suggests some ambiguity in their legal status and meaning with Ford et al, (2007) noting that the terms are used interchangeably.

This indicates a system of discourse that holds within it certain rules and practices that govern how consent is thought about, but fails to recognise the rights of children to consent over assent. The deployment of another and differing discourse does work to construct an alternative consent process that is bounded within age and capability driven discourses and has an effect on the positioning of the child within participatory practices. So why use a discourse of ‘informed assent to EP work’ rather than ‘informed consent’?

**Assent and Consent – Policy Discourse**

To begin to interrogate the mobilisation of assent and consent with educational psychology, assent first needs to be located in the policy discourse as a way to explore how EP’s enact practices of consent

The difference between assent and consent cannot be easily described or defined with both consent and assent reliant on intersecting legal and social constructs formed on discourses of capacity, age and maturity, indicative of the tensions evidence within protection and participation debates (see Tisdall, 2018; Wyness,
within children’s rights discourse. Eleanor has both regulated her practice of consent by having ‘awareness’ that pre-16 parents hold the right to consent but then continues to state that ‘I don’t think we’ve actually got a policy around it’. Thus, Eleanor is illustrating how practices become constructed as commonsense rules that are regularly performed and distributed whilst simultaneously having discontinuities and ruptures within them. While policy discourse constitutes and is constituted by discourse, much the same as practice, the perception of there being a lack of policy text around consent subjects the discourse to an array of institutional and practice discourses unbridled or constrained by broader institutional aims.

How children and young people consent and assent in their different social contexts remains ambiguous and is not fully resolved in academic literature and policy. McIntosh et al. (2000) define ‘consent’ as the positive agreement of a person while ‘assent’ indicates acquiescence. ‘Assent’ has not been formally defined but generally refers to obtaining children’s agreement to the research process (Baines, 2011). Vitiello (2003) defines assent as more than the lack of objection but the explicit agreement to participate. Assent is seen to complement the formal consent provided by a parent or guardian and seeks to ensure children are part of the decision making (Dockett et al., 2013).

However, situating assent and consent alongside one another as complementary processes risks an uncritical examination of how children are positioned in relation to their rights. Assent is not a term that regularly arises in policy and legislation in England and the UK and is not represented in educational psychology governing documents, yet was deployed by Eleanor as a normative practice. Thus, the robustness of the term in the context of England remains ambiguous. For example, Eleanor’s account where she identifies that there is no policy in relation to assent is indicative of its limited remit and representative of how rules of discourse become reproduced as normative discourses and practices. Yet, irrespective of a lack of robust discussion, assent is a discourse mobilised in some practice and research contexts in England. Conversely, Australian and US legislation depicts that children are not legally able to enter into a contract, thus are unable to legally consent (Broome and Stieglitz, 1992; Brown et al., 2017; Ford et al., 2007; Hurley and Underwood, 2002). Consequently, the terms parental permission and child assent were sanctioned by the American Academy of Pediatrics (APP) (Katz and Webb, 2016). Assent surfaced in the US as a result of a recognition that children should be part of the decision-making alongside their parents and guardians (Brown et al., 2017) illustrating efforts to include and progress towards practices of shared decision making and giving due weight to children’s views. Dissent is viewed as not giving assent, accepted to be both refusal to participate or later withdrawal of involvement (Brown et al., 2017). Thus, assent (or dissent) are not a legal terms but arose from ethical and moral standpoints in efforts to realise the rights and responsibilities of children (Broome and Stieglitz, 1992) and to engage in a process of negotiation directly with children or young people (Sibley et al., 2012) in recognition that the formal consent sought from parents is not sufficient to assume participation
(Brown et al., 2017; Dockett et al., 2012). As such assent here can represent increased efforts to include children and young people in decisions. Dissent is more problematic. Within a research context a child’s dissent would likely lead a researcher to accept their choice not to participate. In a practice context this process becomes much messier and more ethically contentious as children and young people may require support that they are highly resistant to epitomising the ‘swampy lowlands of practice’ Thomas referenced earlier (see Chapter 5 – Part 2).

Furthermore, practical issues can emerge from the separation of consent and assent, particularly if consent is positioned within Gillick competency frameworks. If formal consent is to be prioritised over assent and a child’s assent can be over-ruled then its purpose is in effect meaningless. Conversely, if a child’s assent is respected and the parents are overruled then parental consent is void and a child’s assent is actually consent (Baines, 2011). As such a child’s right to exercise consent is respected nullifying any concept of assent, which appears representative of the principles of Gillick. Likewise, assent is utilised in research but is usually disregarded in medical treatment as an ethical dilemma would arise if a competent child assents or dissents and is overridden (Baines, 2011) and thus assent is not necessarily obtained if there is a medical requirement (Brown et al., 2017), calling into question the status of assent.

The challenges to determining the use of assent lies with the ways in which it intersects with consent. While the practice of assent has arisen from a legalistic construction of consent positioning children incapable of this process, ethical practice still requires informed assent where children’s full understanding of the research process and respect for privacy and confidentiality through practices of ethical reflexivity are still required for participation (Cocks, 2006; Hurley and Underwood, 2002). Assent is justified on the basis that children will not have full understanding of research focus and potential consequences (Dockett et al., 2011). Cocks (2006) outlines how assent is used in research contexts where children and young people are unable to provide and enact traditional consent processes, thus, in stepping outside legalised constructions of consent, assent could be viewed as a participatory practice where children’s views are given due weight. Assent is obtained to ensure children’s perspectives remain central (Ford et al., 2007).

However, despite the potential value of assent in realising children’s participatory rights, this remains dependent on ethical practice and the provision of age appropriate information. Ford et al. (2007) established that examples in literature and ethics committees of information provided for assent in research with children were not written in an age-appropriate format and consequently impacted on children’s understanding of the research process.

Enactments and Practices of Consent
The importance of attending to practices of consent and exploring their potential exclusionary effects has already been discussed. In addition to what has already been explored, EPs provided accounts of how they traversed established and dominant discourses of consent. These enactments illustrate how EPs work to counter certain discourse that may seek to subjugate children’s views.

Thomas narrates his understanding of consent and states:

*So we have parental consent but we wanted to go beyond and realise that for a child who does not want to work with us that’s really important to recognise and I know the CoP and the Children’s and Families Act and a number of pieces of legislation talk about age, maturity and understanding but I think I would come from the perspective that most of the time if given the opportunity and the resources and tools, children are able to tell us what they want and it is ok for a child to say no I don’t want to work with that person and I don’t want to tell you about.* (Thomas)

**Recognising the consent of children**

Thomas, in the above extract directly links the process of consent to a practice undertaken with parents and says ‘we have parental consent’. This somewhat aligns with how other EPs have expressed practices that prioritise parental consent.

Nonetheless, Thomas explains how ‘we wanted to go beyond and realise that for a child who does not want to work with us that’s really important to recognise’. Thomas wanting to go ‘beyond’ is qualified through his recognition of engaging with the consent process directly with a child where Thomas positions children as being capable of engaging in consent processes through the providing opportunity, tools and resources.

Resistance towards relying on parental consent demonstrates increased attention to the tensions within children’s rights regarding best interest and parent and child’s wishes and views. This is grounded in tensions that EPs and practitioners need to regularly traverse in enacting practice that is believed to be in a child’s best interest and works to uphold a child’s right to education. This reflects the ‘swampy lowland of practice’ Thomas has previously drawn our attention to and discussed in more detail in Chapter 5 (Part 2) wherein he pointed to the ethical dilemmas faced in balancing the right to education and children’s willingness to work with an EP in developing understanding of a child’s needs.

**Countering Deficit Models of Consent**

Thomas has framed consent within the policy discourses of the CoP and the Children and Families Act 2014, which is significant as they are policy enactments of the UNCRC. While the discourse of consent is represented
within the CoP, how children and young people negotiate consent is unaddressed within the policy, thus, policy enactment is subject to the intersecting discourses of ‘age’, ‘maturity’ and perceptions of children’s ‘understanding’ as noted by Thomas where he challenges these deficit discourses. Thomas is drawing our attention to how policy is reproducing the deficit driven discourses present in the UN CRC. Thomas counters these discourses stating how he ‘would come from the perspective that most of the time if given the opportunity and the resources and tools, children are able to tell us what they want’.

**Tools, Resources, Opportunity and Space**

Thomas narrates ways in which EPs can engage in consent processes directly with children and young people and outlines a discourse that ‘most of the time if given the opportunity and the resources and tools, children are able to tell us what they want’. This recognition by Thomas is important when situating how consent is negotiated and represented in policy discourse. Certain discursive regimes mobilise age-defined rules and deficit discourses in how consent is regulated, for example through commonly held beliefs regarding consent being a parental right pre-16 or not recognising Gillick competence. What Thomas is illustrating is that other discourses can surface through spaces that allow for ‘opportunity and the resources and tools’ and these discourses are limited and regulated by restrictions placed on the resources and tools that are mobilised. The policy discourse of CoP (DfE and DoH, 2015) denotes that ‘local authorities must have arrangements for information and advice and should ensure that advice and guidance for children and young people is tailored appropriately for them’ [emphasis added] (p.77). However, practice narrated by EPs would indicate that the development of age appropriate resources needs further development. Thus Thomas is mobilising a suggestion about how the provision of opportunity is one of the mediating forces in whether consent is sought or not, rather than relying on age defined rules.

In doing this Thomas, in the above extract, has placed the responsibility by using ‘we’ on the EP or other professionals to create ‘opportunity’. Critique of participatory methods and practices has long highlighted how children’s participation often takes place within adult-defined and governed spaces (Prout, 2000; Mannion, 2007; Wyness, 2009) and as such challenges in creating spaces or moving from adult spaces in the development of participatory practice is not limited to educational psychology. Space is a central aspect of the participatory framework proposed by Lundy (2007), which depicts how children need to be given the opportunity to participate. Thomas is reminding us of the labour required in children’s rights in creating space and opportunity and in bringing lesser known discourses to the fore.

EPs across all of the interviews provided accounts and illustrated practices where they worked to carve out spaces for children and young people’s participation.
Joseph narrated:

what we’re trying to build up is lots of tools we can use to make it easier so for example people having a profile of themselves which has a picture of a simple description of what you do and your contact details that have been given to the child so they’re, that’s more about informing them and preparing them for what’s happening rather than getting their consent but it is part of that process. (Joseph)

Joseph identifies that in his EPS ‘what we’re trying to build up is lots of tools’. Joseph refers to having a personal profile, which is a tool that several EPs referred to. Using a personal profile is also a tool encouraged in Sanderson’s conceptualisation of Person-centred Planning (Sanderson et al., 2006), which I discussed in Chapter 7, and represents a visual and child friendly method to explain the EP role and informed consent (or assent) process. Joseph refers to a ‘process’ wherein ‘informing’ children and young people is a central aspect of his practice, thus creating a picture of intersecting practices of information and interaction in working towards realising children’s rights. The utilisation of tools, such as personal profiles, is significant and demonstrates ways EPs seek to realise children’s right to information or what is outlined in Article 17 (UNICEF, 1989).

However, Joseph states ‘we’re trying to build up’ tools and thus indicates that this is in progress and suggests how discursive regimes that subjugate children’s consent and participation continue to be maintained at the expense of processes that engage children and young people directly.

Thomas also provides a detailed account of a leaflet that is used in his service. Thomas narrated:

We have developed a children’s leaflet about our service, thinking about children’s rights, to be able to understand and if they don’t understand we need to do something about that, not them. We work specifically from a children’s rights framework in terms of creating our leaflet and the scripts we would use to explain our job to children and various children and we’ve worked with the alternative and augmentative communication tutor to help us create visuals that are not language dependent. We’ve got a long way to go but I would like to think that certainly that my interest in children’s rights has been important in that work. (Thomas)

Thomas explicitly links the development of his services leaflet to children’s rights. This is notable as few accounts of practice provided explicit examples of how children’s rights had been used to directly inform their work with EPs typically viewing mobilising discourse of views and voice in accounting for their understanding of children’s rights. The leaflet, implied to be in use by the whole service through Thomas’ use of ‘we’, is focused on ensuring all children could understand the purpose of educational psychology representing an enactment of Articles 13 and 17 of the UNCRC (UNICEF, 1989).
Furthermore, Thomas illustrates the use of ‘alternative and augmentative communication’ in ensuring a leaflet was produced that was ‘not language dependent’. The leaflet being aimed at a range of communication modes is significant as criticism is levelled at the UK by the UNCRC committee for not including children and young people with SEN in decision making (Committee of the Rights of the Child, 2016). Furthermore, research is limited regarding exploring methods to engage children and young people in decision making who do not use language to communicate (Hill et al. 2016). In developing a leaflet that was not language dependent Thomas and his EPS have created a space that enables children and young people to participate through working with their capabilities (Terzi, 2005) and expands the realisation of rights for children and young people.

**Positioning and Rights**

Thomas, in the extract above, identifies that ‘my interest in children’s rights has been important in that work’. This has a performative element and ensures I am aware that he is an advocate of rights-informed practice. Arguably, such performativity of rights is required given suggestions in academic literature that professional knowledge of children’s rights and the UNCRC is lacking (Manful and McCrystal, 2010) alongside my own analysis of the CoP and educational psychology policy texts, which identified a limited rights discourse. Thus, Thomas is performing rights and therefore producing a discourse that has the power to constitute a stronger discursive system of rights.

Thomas also draws on operations of power within the EP and child relationship, states that ‘if they don’t understand we need to do something about that, not them’. This positioning of children within how children’s rights are realised is illustrative of a number of tensions within the rights discourse. Thomas has firmly placed the responsibility for ensuring the rights of children with the EP (or any practitioner). Theories of children’s rights have attempted to address this argument. Will theory (Steiner, 1998; Wellman, 1995) argues that one possesses rights, however, children lack the capacity to enact their own (Cowden, 2012). To a will theorist it can be acceptable that a child has an appointment guardian who can enact their rights on their behalf (Archard, 2015). Interest theory on the other hand, attempts to address the incompetence issue and proposes that the function of a right is to progress a right-holder’s interests (Cowden, 2012) with certain interests being of particular importance that they create a duty that must be imposed on another to ensure such interests or rights (Archard, 2015). Rather than limiting the function of rights to protecting choice of free will, interest theory aims to protect goods and services for those who may lack the ‘competencies’ to obtain such goods themselves (Cowden, 2012), for example through advocacy. However, both theories imply a degree of adult paternalism wherein it remains possible for children’s views to remain subjugated by adult’s determining whether children and young people are indeed competent enough to enact their own rights (Hanson, 2012).
The mobilisation of incompetency discourses and the struggle for participation and voice are not limited to children’s rights but formed the basis of the activism of other rights movements wherein people’s rights are denied on the basis of gender, colour and disability (Quennerstedt and Quennerstedt, 2014; Raitt, 2005). Women made legal challenges regarding their exclusion from civil rights, such as the right to vote, access tertiary education and hold public office arguing that ‘woman’ was not seen as the legal category of ‘person’ denying entry to being a citizen of society (Raitt, 2005). Raitt continues that children are also differentiated from the normative legal category of ‘person’ denying them entry to a world that is built for adults. Hence, dominant developmental views of the child sustain the relationship between competence and rights (Naughton et al., 2007) and I would argue maintains the regulatory role of adults preventing children’s protagonism (Larkins et al., 2015).

This parallels with Thomas’ previous statement about providing children with the ‘opportunity’ to have a say. While not explicitly referred to, Thomas is pointing to a theory of rights that is grounded in children’s capabilities rather than their incompetence. For instance, capability theory (Nussbaum, 2003; Sen, 1999) calls for analysis of the actual opportunities and freedoms individuals have to realise functionings, such as walking, talking, eating, being educated (Terzi, 2005) or in this case having rights. Terzi (2005) argues that capabilities ‘constitute the space for assessing and seeking equality’, which rests on the particular advantages and disadvantages of an individual within a given space (p.450).

Thus, Thomas has provided another challenge to dominating discourses that position children and young people as needing to work to negotiate adult constructed spaces or be excluded entirely. Thomas is explicit that it is ‘not them [children]’ but the EP who needs to do the work.

**Observation and non-consent**

Thomas also discusses enactments of consent when undertaking observation and draws on his experience of observation and tensions represented in this practice to illuminate how he negotiates consent.

Thomas states:

_A recent example I had was in a classroom observation. The young person was really happy for me to watch in class. I always, always seek consent before I go into an observation and I know not all EPs do, there’s an idea of covert observation that doesn’t fit with my values and what I believe are child’s rights. They should know that I’m there in various ways. For a young child that’s non-verbal that might just be me being with them and if they smile and engage in the play they might not understand what I’m doing but I at least they’re not experiencing my presences as uncomfortable or distracting or disturbing, right_
through to having a conversation as to why I’m there about why I want to sit in class, they don’t have to say yes, you might feel like you have to say yes but you don’t. Your teachers might have said I’m going to do this but you know making it really clear so the leaflet was about making it really clear that children can refuse consent and that’s fine... it’s probably for children nine upwards with you know an ok level of reading skill. We would obviously talk it through but there is a particular page on the back that we rip off and we keep the page at the back which the consent page where they write their name and we explain consent with them and they keep the rest of the leaflet. (Thomas)

Thomas draws on his experience of classroom observation in illustrating how he enacts consent. This is an interesting and useful exemplar of children’s participation and consent and how their rights are represented within this.

Thomas begins with stating that ‘I always, always seek consent before I go into an observation’. Thomas is immediately distancing himself from other forms of practice and states ‘not all EPs do’. Thomas references the ‘idea of covert observation’ and continues to resist this practice and explicitly states that it does not fit with his values and what he believes to be children’s rights. Thus, a relationship is formed between how consent is gained, practices that are covert or concealed and the rights of children and young people.

**Covert**

‘Covert’ suggests something that is clandestine and hidden, hence presenting a practice that one would not necessarily know about and therefore would be unable to consent to. Covert observation has echoes of ethnography where observation is a key data collection method. Ethnography broadly involves the study of cultural groups and communities within their village, workplace or environment or the interactions and developments of a group or organisation (Curtis and Curtis, 2011) with an aim of developing an account of its conceptual world (Smart, 2011). As such, observation of a child in a classroom or education environment overlaps with practices and principles of ethnography, thus suggesting that classroom observation could be subject to the same rigour as ethnographic research.

Ethnography, similar to some aspects of EP practice, is reliant on observation though triangulating findings with other data sources (Curtis and Curtis, 2011; Hammersley and Atkinson, 2019) and such is resonant of what other EPs have said in relation to their assessment of children and young people where they draw on research methodology discourse and seek to triangulate data. For example, Susan, another EP participant, stated that ‘I’ll do an observation or I’ll gather views and triangulate a bit around what they’re interested in’ illustrating how EPs regularly draw on discourses prevalent in research methods (to be discussed later in this
Chapter). Equally, observation in EP practice can be interrogated using similar principles, particularly if we were to ask what the outcome would be if a child or young person declined to participate in research.

For instance, ethnography usually consists of either non-participant observation (covert) or participant observation (Gobo, 2008) and involves the researcher participating overtly or covertly in people’s lives through observing what is happening, listening and through interviews or informal discussion (Hammersley and Atkinson, 2019). The way in which Thomas describes ‘covert observation’ somewhat reflects ethnographic non-participant observation as it requires the researcher to observe from afar, refraining from interaction (Gobo, 2008). Nevertheless, how the researcher or EP negotiates consent for the observation would stem from their ontological position and speaks to how children and young people are viewed as objects or subjects of enquiry. Thus, children and young people observed, researched or evaluated without their knowledge are positioned as objects on enquiry where their voices or views have become marginalised. Ethnography has been perceived as a colonial methodology that needs decolonising (Gobo, 2008) and thus EPs should exercise caution when undertaking observation that they are not producing colonial style practices of power and oppression where voices remain silenced. An ethnographer has the opportunity to hear the voices and stories of individuals marginalised (Kohl, 1994) and thus mechanisms of covert observation may not allow this to take place.

**Seeking Consent**

In countering the practice of covert observation Thomas has explained how it does not align with his beliefs around children’s rights. Arguably, a covert approach to observation would seem to undermine and reject more participatory approaches that prioritise children’s consent and seek to uphold children’s rights. The UNCRC promotes children’s participation as the inclusion of several Articles that give children the right their views heard and given due weight in matters affecting them (Article 12), the right to privacy (Article 16) and the right to information (Article 17). Processes of covert observation are seemingly at odds with these Articles and reject children’s participatory rights.

In articulating his approach, Thomas is clear that children ‘should know that I’m there in various ways’ when discussing his approach to observing children who were non-verbal, demonstrating a respect for the consent and rights of children and young people through providing the opportunity for them to indicate their discomfort. Participant observation requires an interactive approach where relationships are built with social actors who are observed in their natural environment where researchers chronicle their behaviour, undertake everyday activities and traditions and develop an understanding of the meaning of their actions (Gobo, 2008). Hence, an argument would prevail that observation offers insights into children’s lives, particularly if they are
unable to express themselves verbally or have other communication difficulties. Nevertheless, while this could be achieved through observation, as Thomas identifies, there are mechanisms to ensure children and young people are aware and comfortable with your presence thus opposing perceptions of covert research where participants are manipulated and uninformed (Calvey, 2019). Hence, practice underpinned by such principles has implications for upholding children’s rights, particularly their right to be informed and have their privacy respected. As such the benefit of covert research and methods remain contentious (Lugosi, 2006) due to the element of deception (Roulet et al., 2017), though some believe such methods reveal information otherwise hidden from view (Calvey, 2019; Roulet et al., 2017). Nevertheless, there is a general consensus that practices of covert observation and methodology represent a significant ethical challenge (Lugosi, 2006; (Mapedzahama and Dune, 2017).

Paying attention to these discourses and operations of power, as outlined within the debate in ethnography, could offer insight to EPs in how they can uphold the rights of children and young people. A critical ethnographer can identify and draw on the outsider narrative in countering the dominant and normative story (Pignatelli, 1998) and this reflects other EPs assertions in this doctoral research where they seek to ensure children’s voices are ‘held high’ (Susan) and their stories told. EPs regularly position themselves as practitioners who value and place listening to children’s views central to their practice (Gersch and Cutting, 1985; Gersch et al., 1993; Norwich et al., 2006). This may well be the case, particularly for EPs attentive to the power dynamics inherent in their role and the ongoing subjugation of children’s voices. EPs, like ethnographers still have to be attentive to representing the other (Fine, 1994; Wilkinson and Kitizinger, 1996). Therefore, in a similar way to how EPs are governed from multiple institutional sites, ethnographers, in being concerned with issues of equity, must balance the regulation of individuals taking place through practices of normalcy and deviancy within institutional forces and the conforming to professional norms (Pignatelli, 1998). Hence, observation offers an alternative avenue to understand children’s stories, views and voices yet practices of representation derived from ‘covert’ observation could risk maintaining power structures that continue to stifle the stories of children and young people wherein they have not enacted agency and choice in how their story is told. Such ethical dilemmas and the “swampy lowlands of practice” are bounded in issues of rights that need attending to, which can continue to be explored through how EPs have used discourses of research to understand children’s rights and participatory practice.

**Children’s Rights, Educational Psychology and Co-Research**

Continuing with how discourses of research and research methodologies can develop understanding and enactment of children’s rights I will move onto exploring EPs accounts of co-research and research with
children and young people. When expressing their understanding of the UNCRC, EPs regularly mobilised signifiers and descriptions of young person-led research and co-research, particularly in their accounts of their participatory practice in constituting and forming an object of rights (Foucault, 1972).

Unsurprisingly, as EPs identify as scientist-practitioners and therefore, place importance on using research to inform practice (Maliphant et al. 2013; Miller and Frederickson, 2006), EPs demonstrated a reflexive praxis where they explored examples from their own practice and research to illustrate their understanding of the UNCRC. As I will come to explore, discourses of research, specifically practices associated with co-research and young person-led research intersect and overlap, yet operates differently and is afforded a different kind of status to discourses discussed in earlier chapters, such as children’s views. Practices of research could be said to be a discursive strategy, representing a procedure, process or practice where certain strategies can be characterised as uniform and created under equivalent rules, but still presented as alternatives to each other, with different levels of importance (Foucault, 1972). In this way, co-research, built on corresponding principles to children’s participation, but perceived and conceptualised differently by EPs, offers a point of diffraction to examine where one discursive sub-group dominates over another (Foucault, 1972). Therefore, practices of co-research and young person-led research may offer a mechanism to problematize accepted truths (Bacchi, 2012) in expanding and transforming children’s rights practice.

The development of children’s involvement in research arises from childhood studies, the UNCRC and the Gillick ruling (Horgan, 2017; Powell and Smith, 2009). The UNCRC (UNICEF, 1989) outlines a series of participation rights, notably Article 12, wherein children’s views are given due weight. The development of children as co-researchers as an enactment of children’s participatory rights is closely aligned to the UNCRC (1989) and the respect for the views and abilities of children being researched (Alderson, 2012; Kellett, 2011).

Consequently, there has been increasing interest in researching the views and experiences of children and young people as research subjects (Lipponen et al., 2016). This has been enabled through drawing upon range of data collection methods typically also used in participatory practice, such as ranking exercises (Neimi et al., 2018), mapping (Powell, 2010; Travlou et al., 2008), photographs and videos (Johnson et al., 2013; Lipponen et al., 2016), drawing (Eldén, 2013; Literat, 2013; Tay-Lim and Lim, 2013), undertaking interviews (Ponizovsky-Bergelson et al., 2019) and multimethod approaches where children and young people interact with researchers using a range of mediums (Clark, 2010; Lomas, 2012; Punch, 2002). Thus, such research illustrates increasing respect and focus on developing understanding and knowledge regarding the experiences of children and young people. However, conversely, Dan et al. (2019) draw a distinction between participatory or collaborative research and research that uses participatory methods referencing Kohfeldt and Langhout (2012), who define participatory research as a ‘collaborative process of research, reflection, analysis and action’ (p.316) that involved joint problem definition focused on the empowerment and knowledge
production of marginalised communities. These perspectives challenge more traditional research methodologies grounded in developmental approaches where adult-led measurement tools evaluated children’s development and socialisation to the adult world (Corsaro, 1997; Corsaro and Fingerson, 2006) alongside observation where subjects were unaware they were being studied (Woodhead and Faulkner, 2008). However, such approaches failed to account for children’s agency and social interaction (Corsaro and Fingerson, 2006) underestimating children’s competencies, leading to their views being side-lined (Morrow, 2008). Children and young people are positioned and acted upon by others as opposed to being subjects in the social world (Christensen and Prout, 2002).

*Educational Psychology and Researcher Identity*

The discourse of co-research also mobilises and draws upon professional discourses within educational psychology. EPs, alongside other professions, are deemed experts within their field, who are consulted with and provide psychological advice on the lives of children and young people (BPS, 2015). This is reflected in the use of the term researcher, as opposed to child or young person’s participation and/or involvement. The term ‘researcher’ is given to a person who researches and is an investigator or inquirer (Oxford English Dictionary, 2021) and who studies a subject to discover new information or reach a new understanding (Cambridge Dictionary, 2021). Researcher is a derivative noun and was thus formed from the verb research (Oxford English Dictionary, 2021) and names an individual who carries out the research, the researcher, evoking an image of investigator of things or issues of concern. Correspondingly, the concept of co-researcher suggests the co-construction and co-creation of knowledge together with a child or young person rather than them being the objects of inquiry, aligning with what Larkins et al. (2015) promote where children can become their own protagonists in their lives in having their rights realised.

Descriptions of statements of discourse of research to develop the understanding and enactment of the UNCRC by EPs arises from a number of EPs in this doctoral thesis drawing on their research experience and research discourse to narrate their understanding of the UNCRC and participatory practice. In doing this, EPs connect with another central EP discourse – the scientist-practitioner model (Committee on Training in Clinical Psychology, 1947). While, EPs rarely explicitly referred to the scientist-practitioner model within their interviews for this doctoral research it is said to be a central aspect of EP professional identity (Maliphant et al. 2013; Miller and Frederickson, 2006). The model promotes a practice of being research scientists, drawing on research findings in formulating practice (Fallon et al., 2010; Maliphant et al., 2013; Passenger, 2013) and promoting evidence based practice (Gulliford, 2015), positioning EPs as researchers, not just professional practitioners. Therefore, EPs using concepts taken from the discourse of research to understand the UNCRC.
suggest they are drawing on aspects of their professional identity and training to contest the discursive structures within rights discourse, such as co-research.

**Discourses of Research**

A number of the EPs interviewed for this study drew on their research knowledge and experience to consider children’s rights. EPs primarily reflected on the positioning of children and young people within the research process rather than accounting methods of participation. It can be assumed that EPs draw on research practice and terminology as a result of the incorporation of research and researcher identity in their professional doctoral training. Hence, the analysis in this chapter seeks to explore how children and young people are positioned as researchers, but also how research knowledge is used in understanding and enacting the UNCRC in educational psychology.

EPs mobilised their research knowledge in narrating their relationship to certain types of practice seen to be participatory:

*One of the issues for me is, one of the things I’m interested in professionally is what so with the person-centred planning what kind ontological assumptions – this goes back to what paradigms do psychology – what you base your psychological thinking on.* (James)

*Yea I think it’s that whole thing of you’re just someone who has reached a place who can collaborate and understand participation and understand joint decision making, often those kind of people, it comes back to epistemology, can accept that there are different ways of doing and knowing in the world.* (Susan)

The deployment of the words ontology and epistemology performs a knowledge of research and tells us that both James and Susan have either theoretical or research knowledge. On the one hand, such use of terms represents a use of language that privileges academic knowledge and understanding (and addresses the researcher as also knowledgeable of these). Yet, on the other hand it challenges what has been described by Stammers (2009) as ‘uncritical proponents’ of children’s rights resulting in an uncritical questioning of the effects of rights instruments as opposed to instigating critique of assumptions of children’s rights established as truths (Reynaert et al. 2012), with both James and Susan casting a critical look at where they are positioned with regard to children’s participation.

In the above extracts, the EPs are challenging the ‘ontological assumptions’ made in questioning the ‘ways of doing and knowing the world’. Ontology ‘is concerned with the nature of the world’, the assumptions we make
and consideration of what is there to know (Willig, 2013; p.12). James above, references the relationship between undertaking person-centred planning and the ontological assumptions you base your psychological thinking on. Similarly, how children’s rights are understood and enacted will be based on how rights, children and how children are position in relation to those rights. For instance, with regards to children, the question lies in ‘How are children constituted?’ (Spyrou, 2019; p.318). Hence James, arguably, is identifying how practices, in this case person-centred practice, are enacted rests on how one’s ontology constructs views of childhood and children.

The nature of childhood, and what it means to be a child, is not (of course) a new field of inquiry. For instance, children have long been viewed as incomplete adults and ‘becomings’ with challenges to this status widely discussed in the what was called the ‘new’ sociology of childhood (James and Prout, 2015). Alan Prout has provided useful analyses of childhood ontology and the arbitrary differentiation between children and adults, arguing that the question of how a child or adult is constituted should be concerned with ‘the complex interplay, networking and orchestration of different natural, discursive, collective and hybrid materials’ (Prout, 2005; p.81). Such a conceptualisation of how children and childhood are constituted is not restricted to the arena of academic research, but applies to how children and young people interact and are positioned in all aspects of their lives. Thus, rather than exploring the epistemological nature of knowledge and how we explore and analyse such knowledge, ontology requires us to consider how children, and in this doctoral research, children’s relationship to rights, are understood and constituted.

Subsequently, Spyrou (2019) argues for an ‘ontological turn’ to explore the construction of children? This, Spyrou suggests requires greater consideration of the materiality of children’s lives in opening a form of research inquiry that accounts for human and non-human forces in uncovering ‘how childhood is done’ and ‘what kind of children (and others) emerge out of children’s entanglement with the material and discursive worlds in which their lives are embedded’ (Syprou, 2019; p.318). However, I would argue that an ‘ontological turn’ is not required in pursuing this endeavour and can be (and has been) pursued through Foucault’s critical ontology and analysis of discourse. The ‘critical ontology of ourselves’ (Foucault, 1984/1997) refers to individuals as historically constituted based on certain systems of thought. Foucault characterised three domains of his critical ontology, which included: the domain of truth, referring to how individuals are constituted as objects and subjects of knowledge; power where subjects are constituted through acting on others or by others; and ethics where we constitute ourselves as certain kinds of subjects (Yates and Hiles, 2010). Thus, Foucault’s conceptualisation of power/knowledge assumes the operation of power across social practices in constituting the subject or objects of knowledge and subsequently the nature of reality (Oksala, 2010), which can be applied to how children and young people are constructed within research processes as both objects and subjects constructed through practices of power.
Such practices are evidently already under consideration by EPs, with James and Susan identifying how their views on knowledge construction and production influence person-centred and participatory practice. Susan in particular specifies ‘joint decision making’, aligning with Spyrou (2019) who proposes that there is too much focus on ‘child-centredness’, ‘children’s voices’ or ‘children’s perspectives’ and argues for a more relational and ontological focus on how agency is socially and relationally constituted, not too dissimilar to Roche (1999) who argues for the interconnectedness of decision making, also recalling the tensions between child and family-centred planning processes discussed in Chapter 7. Uniacke et al. (2018) promotes family-centred care and there is a recognition by EPs that the CoP (DfE and DoH, 2015) privileges family centred planning. Debates around this suggest that best interest risks the privileging of adult agendas (Lundy, 2007). Nonetheless, Spyrou suggests that remaining child-centred in exploring such complicated phenomena is no longer justified. He argues that children cannot only be viewed as an independent and autonomous and proposes an orientation that accounts for the complexity of the social world (Spyrou, 2019). However, this is arguably underway with several EPs illustrating and providing scrutiny to how person-centred and participatory practice require consideration of complexities beyond the child or young person.

So far, I have illustrated how EPs have used research knowledge to inform their understanding of practice. However, EPs also drew on their research experiences to work through their understanding and enactment of the UNCRC.

One particular extract from Michael offers a useful narrative of his experience and reflections on research with young people, and his own positioning as a researcher.

Michael stated:

I got very interested in young people as researchers or co-researchers and part of my ambition was to try understand better what that term meant, co-researchers and I supposed I ended up thinking that, I think it’s fraught because if you’re positioned as a co-researcher then that suggests that’s got some degree of equality across the board. So you could interpret that as you’ve designed the research questions, you disseminate the results, you write up the research paper from start to finish and clearly that doesn’t happen in many cases. I mean children working as co-researchers has been a burgeoning field in the last ten, twenty years I suppose. I was doing a project with some young people and I started to think about what it was they were doing and I was regarding them as co-researchers and wanted to theorise that a bit more I suppose and I became more aware of the many different frameworks around participation and Hart and various other people and how tokenistic that can be quite often, but the particular article I never remember, is it Article 12? (Michael)
The above extract outlines examples of practice, but largely focuses on how children and young people are positioned as co-researchers. Accordingly, I have selected particular discourses for analysis, including co-research and theorisation and how these debates are ‘fraught’ within the field, to explore how children and young people are constituted within discourses of co-research and how this contributes and develops rights informed practices.

Michael mobilises the discourse of research and co-research in response to a question regarding his understanding of the UNCRC, thus, Michael usefully forms a relationship between the UNCRC and the practice of young people being researchers and/or co-researchers.

Michael has used research to illustrate his understanding and demonstrate a recognition of the scope of research as a practice in establishing the views of children and young people as set out in Article 12 of the UNCRC, establishing his knowledge and understanding of the UNCRC. Michael states how ‘children working as co-researchers has been a burgeoning field in the last ten, twenty years’ and identifies a timeline wherein the concept of children and young people working as researchers has become an available resource. This largely coincides with the advent of the UNCRC and its legitimisation of participatory practices in research, service development and provision (Alderson, 2008). Thus, Michael is describing and drawing attention to is the discursive conditions that have allowed co-research with children and young people to be spoken about.

**The ‘Co’ in co-researcher**

Co-research, young person-led research and research with children and young people, I would argue, has become popularised in the discourse, representing terms commonly drawn upon in qualitative research seeking to involve children and young people (Christensen and James, 2008). Building on the idea discussed by Spyrou (2019) where he argues for a more relational and ontological orientation, I will explore Michael’s use of the discourse of co-research in how he positions and relates to children and young people.

Michael, in the earlier extract, refers to children and young people as being a ‘co-researcher’. Michael uses the prefix of ‘co’. The prefix co, as defined by the Cambridge dictionary means ‘together’ or ‘with’ (Cambridge Dictionary, 2021) and indicates that something is being done together with someone, for example, co-author, co-founder, co-facilitate and more. Michael’s use of the prefix indicates a joint collaborative activity where children, young people and the EP are researching together. Michael himself identifies that by positioning a young person as a co-researcher you are implying how ‘that suggests that’s got some degree of equality’. Thus, Michael is bringing into view that, by using the term co-research, a particular form of children’s participation is constituted, which is more indicative of strong participatory practice discussed in earlier
chapters (see Chapter 6 and 7), which sought to prioritise participatory mechanisms where children and young people partner with adults or led on decision making (see Hart, 1992; Lundy, 2007).

The use of the term co-research recalls other discourses that are present within participatory practice, such as co-production, which can be operationalised within practices of participation, similar to co-research, but also differs in form. Co-production, popularised by Ostrom (1996) in development literature, has emerged over recent years as a method to deliver and improve services (Barker, 2010) is closely linked to participatory practice (Bell and Pahl, 2017). In the same way as co-research, the use of ‘co’ reinforces a practice different to other mechanisms of participation such as involvement, inclusion, voice and views, as ‘co’ indicates work and activity that is done together.

Therefore, children and young people as researchers or co-researchers represents a shift from the position of the young person from the object of research to active subjects who participate in the research process (Larkins et al., 2015). This construction of the child as a co-researcher echoes Spyrou’s (2019) call for a more ontologically orientated childhood studies with concern for children as relational beings rather than more prominent ideas of child-centredness.

Being fraught and co-research

Nevertheless, Michael also claims that the understanding of co-research is ‘fraught’. Using this descriptor Michael is drawing attention to tensions within the practice field and contradictions within discourses, arguably also illustrative of key debates within participatory practice (Lundy, 2007; Tisdall, 2016; 2017), thus illustrative of participatory discourse more broadly. As already explored, co-research indicates collaboration and joint activity. However, Michael is indicating that despite what the term co-research constitutes within the discursive field, contradictions remain present.

Michael outlines how ‘I think it’s fraught because if you’re positioned as a co-researcher then that suggests that’s got some degree of equality across the board’. Michael is drawing our attention to the idea that co-research implies an equal positioning between the professional researcher and the child or young person researcher. Michael is presenting the change in status of the child or young person but as suggested by (Shier, 2015), though with reference to ‘child-led’ research rather than ‘co-research’, terms can be misleading without the problematization of the power differential between child and adult leaders.

Michael goes on to narrate what the practice of co-research might look like and conceptualises some of the joint activity you may undertake with your co-researcher. Michael identifies that ‘you’ve designed the
research questions, you disseminate the results, you write up the research paper from start to finish and clearly that doesn’t happen in many cases’. Co-research is conceptualised by Michael as a joint activity where you co-construct activity and artefacts such as questions and results dissemination and the young person would be involved in that process. This is indicative of where earlier I drew attention to (see Chapter 6) how Eleanor reflected on how children were consulted with:

*I think largely how we think about participation in EP work we just consult with children but they don’t get a say in defining what the issue is or what needs to be assessed.* (Eleanor)

In a similar way to how Eleanor questioned herself about how EPs involve children and young people, Michael took on a rhetorical position in self-questioning if these activities took place. In conclusion, Michael explained that they do not ‘happen in many cases’ and draws attention to a need to explore the potential exclusionary practices within the discursive regimes at play.

Specifically, Michael is describing a process where arguably children or young people’s involvement or participation is limited to voice and views, rather than the surrounding processes and structures such as designing research questions, or as Eleanor identified, defining the issue. Participatory practice defined in these terms is representative of children and young people are positioned as less capable with Article 12 being limited to having their views heard, but not being given due weight (Lundy, 2007). Children are not rights holders, but are subject to adults protecting their rights on their behalf. Michael reinforces his claims making reference to the ‘different frameworks around participation’. Michael specifically mentions the popular framework by Hart (1992) in reflecting on how he developed his understanding of co-research. Michael makes a useful comparison to participatory frameworks and how ‘tokenistic that can be’, demonstrating how perceived tokenistic practices continue to be mobilised.

Thus, Michael brings into view contradictions and the discontinuity of the discourse in his illustration of some of the tensions or fraught nature of co-research. Through Michael’s account it becomes apparent that, despite the availability of a discourse that suggests the conduct of co-research, the discursive field is still awash with exclusionary practices and discontinuities resulting a lack of conceptual clarity within the practice of co-research

*Ambition to understand*

For example, Michael sets out an ‘ambition’ to ‘understand better what that [co-research] term meant’ and thus presents his own (discourse) analysis. This is an important endeavour to undertake as it draws attention to Foucault’s concept of discontinuities wherein whole concepts or themes break down under closer scrutiny (Foucault, 1972). Michael is telling us that he has taken on an already pre-defined concept and subjected it to
his own analysis of the term to develop his understanding of what the term means and what it is he is doing in enacting his professional identity as a research, theorist and practitioner.

Interestingly, Michael only outlines that it was ‘part of my ambition’. Michael uses the determiner ‘my’ and refers only to the pursuit of his understanding of co-research. This, as a standalone statement could be said to reflect Michael’s narration of this research process. However, Michael’s account of his ambition to understand co-research better highlights a discursive regime where understanding of discourses of children’s rights is individualised as the concern of the individual EP practitioner rather than part of a discursive regime of rights predominating across educational psychology practice.

Furthermore, EPs drawing on discursive resources privileged within their profession also have a productive/performative aspect wherein they are able to provide research and knowledge to the child rights discipline in contributing to children’s rights knowledge and the theorisation of children’s rights. EPs, by mobilising their professional grounding and research knowledge positioned themselves as subjects or narrators able to bring analytical clarity to some of the discursive structures that bolster the child rights discourse. Therefore, children and young people as researchers or co-researchers counters the idea of the professional expert or scientist practitioner and promoting children and young people’s involvement to beyond voice and views, as discussed earlier in Chapter 6, to strong positioning within research and practice processes. Thus, using the term researcher incorporates a more expanded understanding of children’s participation that support children and young people in agenda setting, leading decisions, collaborating and having agency.

To ‘theorise’ children’s rights

Michael, in his understanding of and mobilisation of research orientated discourse identifies that he ‘wanted to theorise that [co-research] a bit more’. Michael, by stating he is going to theorise co-research, is again deploying his own researcher, academic and scientist-practitioner professional identity and position within a University department. By drawing attention to established discourses within the wider formation of rights discourses Michael is establishing his position as someone who has a need to understand and dissect key terms in developing knowledge and understanding, and also his authority as someone qualified and authorised to do this.

The concern with theorisation highlighted by Michael reflects concerns/discontinuities within the child rights discourse where renowned child rights theorists identify a lack of theorisation within the field (Reynaert, 2009; Quennerstedt, 2013). Thus this, combined with Michael’s own analysis of the co-research field, illuminates how the unified theme of rights and participation can break down under greater scrutiny.
In addition, Michael’s mobilisation of theorisation has a productive/performative effect. Michael’s account of a need to ‘understand better’ presents a need for increased knowledge on the subject of co-research and places Michael in the position of investigating and understanding how children and young people are positioned within a rights informed framework of research. The action ‘to try understand better’ implies that there was work to be done. While some, for example, Reynaert et al. (2009) assert that children’s rights are enacted within question, thus are not under critique (Cordero Arce, 2012; Quennerstedt, 2013), Michael is establishing that there is work to be done and EPs are making attempts to theorise children’s rights in efforts to incorporate into their practice.

By drawing on the alternative discourse of co-research, rather than restricting the conceptualisation of children’s rights to voice and views, as discussed in previous chapters (see Chapter 6) Michael’s mobilisation of co-research constructs a discourse that prioritises collaboration.

Conclusion

Through deploying a discourse of co-research, and problematizing practices, which continue to subjugate children’s positions, Michael is illustrating deficiencies in the discourse of participation, and the ways in which certain discourses collaborate to create practices which dominate and exclude. The more dominant discourses of voice and views arguably maintain the position of the EP as the professional expert to gathers the views of the child or young person, maintaining their position as the object of inquiry, thus co-research provides an alternative model of practice. Michael brings into view, through his prioritising of co-research, the exclusionary and limiting practices of voice and views. Therefore, positioning of the child or young person as a researcher constructs the child or young person as actively in participating in their lives, capable and competent in identifying problems and issues as opposed to passive objects of inquiry.

Nevertheless, challenges remain as highlighted through examination of discourses of consent. How consent is enacted with children and young people is dependent on legal and socially constructed norms, with age defined consent shifting across different aspects of children’s lives. These practices of consent further highlight how children’s rights is bound and regulated by deficit discourses that seek to subjugate children’s voices. EPs did respond to this and provided accounts of how they work to establish mechanisms to work towards establishing children’s rights and participation.
Chapter 10 – Conclusion: Discourses of Educational Psychologists’ Accounts and Understanding of the UNCRC

This doctoral research explored, primarily through a Foucauldian Discourse Analysis (FDA) of accounts by educational psychologists (EPs) in England of their understanding and enactment of the UNCRC in educational psychology. The UNCRC, in being the most ratified human rights convention in the world (UNICEF, 2021), is a ‘codification’ of rights (Archard, 2015), underpins and influences work with children and young people in viewing them as rights holders and active agents in their lives (Holzscheiter, 2011; Liebel, 2012). Crucially, accounts from EPs, as practitioners situated within the wider children and young people’s workforce, can provide insight into the systems and practices operating, which both support and limit understanding and enactment of the UNCRC. Thus, findings from this research offer perspectives on the ways in which rights-informed practices are understood and strengthened in developing the UNCRC locally and nationally.

Expanding the Knowledge Field

To my knowledge there is no other research, either discursively orientated or underpinned by other epistemologies, exploring how EPs understand and enact the UNCRC. Existing research is largely confined to the strengthening of mechanisms of participation (Aston and Lambert, 2010; Harding and Atkinson, 2009; Hartas and Lindsay, 2011) or establishing children and young people’s views (Billington, 2018; Gregory and Purcell, 2014; Nuttall and Woods, 2013; Sheffield and Morgan, 2017; Tellis-James and Fox, 2016), rather than the consideration of wider project of children’s rights. This is indicative of research beyond the field of educational psychology, with there being a dearth of research exploring the perspectives of practitioners, including their knowledge, understanding and enactment, on the UNCRC (Blanchet-Cohen & Bedeaux, 2014; CRAE, 2009; Jerome et al., 2015; Lundy et al. 2015; Manful & McCrystal, 2010), with research typically focused on the participation of children and young people and strengthening mechanisms to establish their views (Franklin and Sloper, 2009; Coppock and Phillips, 2013; Hill, 2006; Lundy, 2007; Tisdall, 2015). Consequently, up to now, there has been little attention to the analysis and review of practitioner knowledge.

Thesis Claims

EPs’ accounts were examined as a case example of how members of a professional group narrated their understanding and enactment of the UNCRC. This research does not seek to claim that the participant EPs are representative of the wider discipline of educational psychology but to expound how certain understandings of children’s rights come to be spoken of and represented in practice in constituting discourses of children’s
rights in educational psychology. Foucault defined ‘discourse as a system of representation’ (Hall, 2001; p.73.) in which rules and practices result in meaningful statements and establish a discourse (Hall, 2001; Mills, 2010). Discourse focuses attention, not only on use of language, common perspectives and practices, but also on discontinuities and ruptures and how subjects are positioned within these (Foucault, 1972). Thus, the turn to discourse in this project is indicative of the focus on identifying the location and practices in constituting what is ‘unsaid’ (Foucault, 1972; p.119) and the positioning of subjects in relation to one another. These claims are situated and indicative of the production of knowledge of a selected group of EPs, however, FDA can identify how institutional structures maintain a complex interplay of practices which underpin the production of truth (Michel Foucault, 1981), thus giving rise to developed understanding of the legislative and organisational context and practices influencing how EPs account for their understanding and enactment of the UNCRC.

**Discursive Approaches – Problematizing Rights**

I highlighted in Chapter 3 how this thesis would take up instances of practice, to be treated as ‘problematizing moments’ in questioning accepted truths (Bacchi, 2012; p.2). This was, in some respects, to respond others concern of a lack of theorisation of children’s rights, with greater critique and theorisation required in countering an overall consensus building in the field (see Cordero Arce, 2012; Quennerstedt, 2013; Quennerstedt et al., 2018; Reynaert et al., 2012). In this way, this thesis did not accept the universality of the UNCRC, taking what is perceived as a truth and problematize how we think about and judge certain objects in pursuing new experiences (Lemke, 2011) to explore ‘multiple sights of possibility’ with one perspective not perceived to be more advanced or accurate (1997, Canella; p.37).

Therefore, this thesis has hopefully identified and developed understanding of problems or issues of concern. Chapter 3 drew attention to what was conceptualised as ‘the gap problem’ by Pupavac (2001), which refers to the gap between the ideal reality made visible by the UNCRC and the actual reality. Rather than identifying gaps in knowledge, this thesis has drawn attention to how certain forms of knowledge have been prioritised over others, but recognising that this requires knowledge that goes beyond focusing on strengthening implementation, but to consider the multifarious spaces for development of rights dialogue and critique in support of Reynaert et al. (2012) who rejects a focus on more implementing of rights, but that rights are a place to initiate dialogue.

This endeavour was undertaken through drawing on Foucauldian approaches, primarily Foucault’s Archaeology of Knowledge (Foucault, 1972). For Foucault a discourse, is ‘constituted by all that was said in all the statements that names it, divided it up, described it, explained it, traced its developments, indicated its various correlations, judged it, and possibly gave it speech by articulating it, in its name, discourses that were
taken as its own’ (Foucault, 1972; p.35). This almost all encompassing approach allows for the incorporation of the multitude of signifiers and discourses which constitute a discursive formation for children’s rights, as central to this is approach is how, according to Foucault (1972) a group of statements no longer refer to a single object, for instance the UNCRC, will appear but differ in quality to statements previously deployed, seen to produce a similar effect (Mills, 2010).

Therefore, a series of discourses that form a group of statements constitutive of a discursive formation where identified in the course of this doctoral research. This thesis does not claim to have encapsulated all aspects of statements constituting how children’s rights operates in educational psychology, but focused on discourses which repeated, were reproduced and illustrated a degree of regularity and continuity in professional discourse, namely, understandings of the concept of rights, participation and associated discourses of views, voice and person-centred planning, advocacy, consent and co-research. Through FDA the spaces in which these various objects of discourse emerged, to be worked upon and transformed, were explored to elucidate the ‘interplay of rules that define the transformation of these different objects’ (Foucault, 197; p.36).

In undertaking this FDA, the findings illustrated in Chapters 5, 6, 7, 8 and 9 explored a series of discourses. The aim was not to elicit and produce a coherent narrative of EP’s understanding and enactment of the UNCRC, but illuminate the multiplicity of discourses which intersect through describing relationships, similarities, and continuities, in describing a system of ideas, alongside its discontinuities and ruptures (Foucault, 1972).

A Discursive Formation – the UNCRC as accounted by Educational Psychologists

The discursive formation for Foucault is a group statements concerned with the same topic and appear to produce a similar effect (Mills, 2010). The analysis is concerned with the ‘conditions of existence’ or the ‘rules of formation’, identifying the relationships and system of dispersion between the object, mode of statement (enunciative modalities), concepts and thematic (or strategic) choices (Foucault, 1972). It is these rules and systems that have been explored in the formation of the discourse of children’s rights in educational psychology, which form and structure the conclusion to this doctoral thesis.

As I will come to illustrate, the analysis in this doctoral research has been concerned with the construction of the object of rights, how statements of rights are deployed, the development of concepts and EPs’ thematic and strategic choices. The aim is not to reduce identified gaps, discontinuities and ruptures, but to examine the intersecting practice and institutional discourses that inform how the UNCRC and children’s rights are understood and are claimed to enacted in educational psychology. To conclude this thesis, I will take the...
different aspects constituting a discursive formation and illustrate how EPs have accounted their understanding and enactment of the UNCRC.

**Formation of Objects**

Children’s rights is constructed as an object of discourse through the production of the UNCRC as a material document, which represents what Archard (2015) termed the ‘codification of children’s rights’ (p.108-109). This doctoral research was concerned with how this ‘codification’ or representation of rights was deployed throughout policy texts and EPs accounts in the production and reproduction of children’s rights knowledge and discourse. The UNCRC, and children’s rights more generally are constituted through multiple and intersecting discourses, therefore are ‘statements different in form, and dispersed in time, form a group if they refer to one and the same object’ (Foucault, 1972; p.32). However, children’s rights, should not be seen as a ‘unity of discourse’, but should be known through space where objects emerge and are transformed (Foucault, 1972). Thus, children’s rights is constituted by discourse, but also constructs the object of discourse, which requires charting their ‘surface of emergence’, ‘authorities of delimitation’ and ‘grids of specification’ and the interrelation between these (Foucault, 1972; p.45-46). The focus of EPs’ constructions of rights was through how they were positioned in relation to their particular institutional positions and authorities, how rights emerged within the educational psychology context also demonstrated the legislative and organisational context EPs operated within.

**Legislative, Policy and Organisational Context**

The review of the literature in Chapter 2 and the outline of the key legislative and policy context in Chapter 4 outlined the governance structures supporting EPs’ practice. While, it was not possible to undertake an extensive analysis of policy texts for this thesis, the review demonstrated the intersecting and dispersed legislative, policy and organisational context underpinning EPs’ practice in England. Therefore, the review of literature and policy identified key ‘surfaces of emergence’ across and through institutional discourses and practices, to elucidate and provide examples of how the UNCRC and children’s rights were represented within the wider context influencing EPs’ practice and the ways in which EPs then constructed rights in relation to their institutional positions, through practices of legitimation and operations of power.

**UNCRC**

From the analysis set out in Chapter 5, it could be argued that the relevance and status of the UNCRC is explicit for EPs, in being a key document integrated into a series of legislative and policy texts pertinent to EP practice
as outlined in Chapters 2 and 4. The accounts from EPs for this thesis demonstrated the ways that the UNCRC influenced their practice, particularly in constituting a discursive practice of rights.

However, paradoxically, as discussed in Chapter 4, an EP claimed that the UNCRC did not hold particular status within EP practice, with others indicating they were relatively unaware of its content. Such accounts constructed an alternative perspective where, despite the far reaching dispersal of the UNCRC across policy and practice, it can still be minimised and obscured calling into question the status of the UNCRC in educational psychology. This gap, or absence, was manifest across EPs’ accounts in relation to the intricacies of the UNCRC often encapsulated within indeterminate signifiers meant to refer to the UNCRC, for example, ‘views’ and ‘voice’. In this way signifiers of rights are performative (Butler, 2010), indicative of what I argue represents an empty signifier, where the meaning assigned to the signifier extends beyond the signified becoming emptied of meaning (Conde Soto, 2020). Equally, this performativity explains what has led to what is seen to be diminished realisation of the UNCRC evident in the reduction of the UNCRC to a discourse of views and generalised statements of rights (Lundy, 2007).

Wider Policy

How the UNCRC remained constrained in its conceptualisation is not to be attributed to educational psychology specifically, but the policy architecture EPs are situated within. My review of policy texts, drawing on key debates from the academic literature, highlighted the complex intersection of the UK and England’s legislative context, which cuts across practitioner groups, governing multiple institutions. Crucially, in a traded context, EPs’ practice was constructed through neoliberal practices where they or ‘I’ constituted their own practice, illustrating neoliberal self-governance roll back (Pick and Ticknell, 2002) resulting in EPs being individually responsible for children’s rights over their governing structures.

The review of academic literature and policy early in this thesis illustrated the importance of the SEND policy context, though the question was posed by a number of EPs throughout my research regarding the relevance of a focus on the Special Educational Needs and Disability Code of Practice 2015 (hereafter the CoP). What was found is that educational psychology is built on a contentious SEND policy framework. The broader context points to a systemic marginalising children with SEND, the UK media still awash with issues and evocative discourse that speaks of the ‘crisis’ in SEND (Guardian 2019; 2021) where support is lacking or withdrawn and children become the casualties of further societal exclusion, for instance children with SEND being disproportionately represented in school exclusion (CRAE, 2018). In this way, research into children’s rights in the educational psychology context has wider social justice implications.

The relevance of policy texts also arises from how historically, the status of educational psychology has at times, been precarious, or subject to bureaucratic mechanisms (Faupel and Norgate, 1993; Gillham, 1978),
discussed by EPs across the academic literature, having said to have led their profession towards capacity driven testing rather than psychological understandings between the children and their social and educational context (Farrell, 2010).

Thus, certain discourses have largely been privileged, which for the purpose of this thesis, is an ongoing exclusion of the rights discourse. The findings from this thesis illustrated how rights discourse was limited across the policies and texts explored in Chapter 4. Similarly, Sayers (2018) also argues that the Code of Practice has missed an opportunity to mobilise a discourse of rights, with it also lagging behind disability rights activist counterparts in terms of exploring the social model in the context of SEN.

This is despite recent policy changes in the form of the Children and Families Act 2014 and the CoP (DfE and DfH, 2015), set out so called ‘new rights’, in part an effort by the UK government to strengthen their commitment to the UNCRC (House of Lords and House of Commons, 2013). These texts frame and constitute educational psychology practice, thus are part of the legislative context supporting EPs’ enactment of the UNCRC.

Specifically, the CoP makes commitments to the UNCRC, locating the CoP as ‘carrier’ of discourses, a ‘surface of emergence’ of children’s rights, where such discourses reproduced, re-specified, divided, classified, related and regrouped (Foucault, 1972). However, I would argue, it largely eschews what was presented as ‘radical’ change (Lehane, 2016; Norwich, 2014). While an in-depth discussion of the representations of rights in legislation and policy was beyond the scope of this thesis, I have drawn attention to practices which represent a limiting and regulation of children’s rights. For some, shifts in the CoP are seen to indicate a stronger, overall commitment, offering ‘new’ rights, to ensure the views of children and young people and their families are included in educational planning (Harris and Davidge, 2019). Conversely, as discussed in Chapter 4, age imposed binaries in the CoP in the form of a transfer of rights to young people at age 16 regulating when children’s views are formally included, disavow children’s participatory rights, with children younger reliant on the professional and institutional structures and processes they are part of and thus, performative enactments of children’s views and voice. This represents a systematic ‘othering’ of children throughout the CoP where the introduction of ‘new rights’ for young people aged 16 and over, obscures the limiting of rights for children under 16. Thus, the performativity of participatory discourses hides opportunities for more distinct opportunities for inclusion in decision making.

While, future research would be required to explore the effects of the CoP, what can be seen is a repeat of existing concerns where educational psychology remains built on precarious SEND policy, with no robust children’s rights framework. This brings into stark view the ways in which the CoP is a reconstitution of existing discourses, doing little to strengthen or transform the SEND system or building rights-informed practices in
strengthening UNCRC enactment. If the CoP is to be located as a discursive resource to promote new rights and enhanced involvement of children and young people an overall shift in objective of the Code of Practice is required to establish space for a discourse of grounded in principles of social justice and rights as a mechanism to instigate change.

*Educational Psychology Policy Texts*

The analysis in Chapter 4, not only illustrated the precarious nature of the rights discourse in national policy, but illustrated how educational psychology policy texts reproduce and distribute discourses from the Code of Practice. This is most evident through the *Guidance for Educational Psychologists (EPs) when preparing reports for children and young people following the implementation of The Children and Families Act 2014* (BPS, 2015). The review of educational psychology governing documents in Chapter 4, highlighted the deployment of a discourse of views at the expense of a discourse of rights, with limited reference to Articles other than Article 12. Consequently, educational psychology reproduces practices which limit Article 12 seen to reflect a lack of awareness by practitioners of the full scope of Article 12 (Lundy, 2007). Usefully, the BPS Practice Guidelines (2018) indicated a commitment to the UNCRC in relation to the informed consent of children and young people, signalling an understanding of the scope of Article 12 to extend beyond gathering children’s views, but to include in decision making.

Having considered how the UNCRC is represented across different policy texts it is possible to identify how the discourse of rights is constituted across policy texts delimits educational psychology practice. In mapping the ‘surface of emergence’ onto which the UNCRC has emerged as a statement, indicates, not a hidden meaning or assumption of the reasons for its absence, but rather to illuminate the UNCRC’s status as unsaid and absent from the system of statements that are repeated and reproduced (Foucault, 1972). This absence represents a space of departure or differentiation for EPs with regard to how they understand and enact children’s rights. Through interrogation of policy texts by EPs themselves, specifically undertaking a rights informed analysis, would better enable EPs to identify how the UNCRC is represented and how certain rights risk being infringed upon. In doing so, EPs will be better able to influence strategic educational change, informed by the UNCRC. I suggest that taking this position in relation to children’s rights would require shifting from taking an ‘uncritical proponent’ stance (Stammers, 2009), which involves touting unchecked beliefs regarding the positive effects of the UNCRC to what Reynaert et al. (2012) proposes as a ‘critical proponent’ where the foundations of children’s rights are accepted but through the questioning of assumptions that construct children’s rights.

*Enunciative Modalities*
So far I have identified key sites, relevant to EPs, where the UNCRC is situated institutionally. In the identification and analysis of discursive formations, Foucault also explores what he terms ‘enunciative modalities’, referring to the origin and construction of statements (Foucault, 1972), in other words, who is deploying statements in the formation of the discourse and from what position or institutional sites are they speaking from.

The analysis of ‘enunciative modalities’ is concerned with three central questions; who is speaking; the institutional sites they are speaking from; and the position of the subject, or the relationship between who is speaking and what is being spoken of (Foucault, 1972). This can be understood, not just through who speaks a sentence (or relays a statement of any kind), but who has the authority to be taken seriously and to hold knowledge and expertise with individual’s authority to speak the ‘truth’ will differ across different contexts (Garrity, 2010). Hence, this invites the question from what position do EPs stand in their dispersal and distribution of the discourse of children’s rights in constituting this discourse.

**Who is speaking?**

The remit and scope of the EP role mediates how they account for their understanding and enactment the UNCRC, also providing insight into the EP organisational context. As I explored in Chapters 2 and 4, EPs are practitioner psychologists, registered with a generic national ‘health professions’ body, the HCPC, simultaneously governed by the BPS who set out expectations regarding their ethical and practice. EPs, in being trained at a doctorate level, often identify with a paradigm of practice grounded in being a scientist-practitioner, which promotes the training of research scientists who draw on their findings to inform practice (Maliphant et al. 2013; Miller and Frederickson, 2006; Passenger, 2013).

An EP’s key function is to undertake psychological assessment and intervention of children and young people in relation to supporting those with SEND (BPS, 2015), which typically locates their practice in the LA context, though can be undertaken through arrangements with EPs who practice privately or in the third sector, for example charity and other voluntary organisations who traverse the educational psychology practice context through being employed by LAs, schools and individual families to undertake assessment. As highlighted in Chapter 2, changes to a marketised model of service provision mean that often EPs are either partially or fully traded, trading their services typically with educational institutions (DfE, 2019). Even if fully traded, educational psychology services are often still employed by or trade with LAs to undertake and provide statutory psychological advice for children and young people undergoing EHCP assessments on behalf of the LA (BPS, 2018). In this way, EPs are legitimised their statutory functions and location in an institution of particular power, as UNCRC duty bearers, through their obligations to uphold the UNCRC on behalf of the
state (delegated to LAs), the main duty bearer (Save the Children, 2007), but also as non-state actors with responsibilities towards children (Blanchet-Cohen and Bedeaux, 2014). EPs in this doctoral research, largely identified with their responsibilities towards Articles of the UNCRC which connected with the remit of the EP, for example, the right to education. EPs identified the importance of education, seeing it as something that children need, highlighted in Chapter 5.

However, in expressing their commitments, EPs often referred to ‘I’ rather than the profession’s obligations as duty bearers to uphold the UNCRC emulating neoliberal governance indicative of ‘disaggregating state power’ (Wilkins, 2018; 2018; p.5), where EPs seemed to struggle to locate the status and relevance of the UNCRC.

**Institutional Sites**

This thesis drew attention to how EPs are part of the complex fabric of children’s services, including educational institutions, which through the corporatisation of LAs has produced an increasingly marketised model of practice where EPs trade their services with a range of actors and institutions. In addition, EPs have responsibilities towards children, young people and families, thus navigating tensions operating between institutional sites and subjects of EPs’ intervention. The analysis in this thesis suggests that how EPs occupy, and were located within these sites can constitute their approach the realisation of children’s rights. Notably, in Chapter 6, EPs highlighted how their role with the LA could result in a tendency towards bureaucratic and tokenistic practices when establishing children’s views, compounded by what I have illustrated to be limited commitments to the UNCRC across policy and organisational discourse where EPs’ practice is underpinned by an institutionally precarious framework of rights. How EPs interacted across these sites drew attention to the risk of dislocating the child through consultative mechanisms in operation which prioritised the schools’ evaluation of need as highlighted in the ‘swampy lowlands’ of practice, or as explored in Chapter 7, through person-centred planning (PCP) which was said to fall under a more family-centred planning framework. Consequently, EPs, acknowledged across their accounts that they did not always deal directly with children, thus favouring more protectionist approaches to realising the UNCRC.

**Subject Positions**

In navigating the tensions outlined above, EPs take up different subject positions in their support of children’s needs or rights. These relations will constitute how EPs account for their enactment of the UNCRC, where discursive practices constituting EPs’ subjectivities, render certain subject positions possible, where discourses will permit or restrict subject positions with implications for the constitution of social practice (Ussher and
In this section, I will explore how EPs take up certain ‘positions’ in how they speak or think about a social object or practice (Arribas-Ayllon and Walkerdine, 2017) in their constitution of the object of children’s rights and associated practices.

‘Well-placed’ to enact children’s rights

A central aim of this research was to explore how EPs account for their understanding and enactment of the UNCRC, arguably underpinned by the institutional position of EPs and how they understand their role with regard to children’s rights. I have argued in my outline of the conceptualisation of this project in Chapter 3 how understanding the place of children’s rights within practice extends beyond the enactment of a strategy, with such approaches underestimating the complexity of the rights discourse.

EPs, in the academic literature, self-constitute their role through claims to be ‘well placed’ to implement education strategy (Tyldesley and Woods, 2015), provide training, development and empowering staff who undertake direct work (Baxter and Frederickson, 2005; Baxter, 2006), arguing to be ‘well placed to act as a bridge between long-established educational and social care cultures and practices due to its distinct knowledge’ (Fallon et al., 2010; p.10). In some respects, EPs’ commitments to voice and views (Gersh et al., 1993; Hammond, 2013; Harding and Atkinson, 2009) establish a subject position in undertaking what is seen to be ‘pedagogical norm’ (Foucault, 1972; p.56) within children’s rights and EP practice, thus acting as a source of legitimation of EPs in leading on enacting the UNCRC. However, as I illustrated throughout the thesis, views and voice do not offer a robust enough basis for UNCRC enactment. For instance, Sargeant (2019) illustrated how voice, in becoming a pedagogical norm was often identified in research seen to be participatory, but not being explicitly linked to the UNCRC. In this way, accounting for understanding and enactment of the UNCRC requires going beyond incidental realisation of the UNCRC through performative expressions of voice and views towards a more substantive mapping and identification of how the UNCRC is explicitly enacted in educational psychology, including areas risking rights infringements.

Advocacy

Central to addressing potential rights infringements is advocacy. Chapter 8 drew attention to how EPs can take up the position of an advocate (Hammond, 2013; Harding and Atkinson, 2009), reinforced by some experiences accounted by EPs, but rejected by others. EPs’ commitment to children’s voice and view, as documented throughout this thesis, can be said to underpin an identification with being advocates with the aim of advocacy being to represent people who are unable or are disempowered represent themselves (Boylan et al., 2016). However, the notion of advocacy can straddle individual or issue-based advocacy (Jenkins, 1995; Fox, 2018) and achieving change through cause-based or policy advocacy (Mosley, 2013). Nevertheless, central to advocacy is the requirement to engage with and directly represent children’s views
(DoH, 2002), which counters EPs’ largely consultative approach where they may not necessarily work directly with a child or young person. Therefore, advocacy in this context can be said to be an act of claim-making, defined by Saward (2006) as how someone’s claims to represent are performative, as the act of claiming to represent constructs the image of the claim-maker, or in this case claims to represent construct EPs as advocates.

Therefore, the question is posed regarding how EPs account for advocacy within role. As outlined in Chapter 8, EPs were asked to describe their understanding of advocacy, identifying ways they can advocate, alongside how EPs do not operate within a defined advocacy role. Crucially, what can be seen is EPs generally have a contractual relationship to undertake statutory assessments for LAs or deliver services to a school providing ‘preventative’ input, which can include consultation and intervention (Fallon et al., 2010; Farrell, 2010; Leadbetter, 2006), which challenges the status of EPs as advocates. This is not to denounce EPs’ commitment to children and young people or representing their views, but to recognise the significant institutional conflicts they operate under. It can be argued that EPs’ primary relationship is with the commissioner (school, LA etc.) to deliver a particular service to meet their needs (in meeting the child’s needs), rather being driven by what the child or young person is requesting. This is in contrast to commissioned advocacy services where, traditionally, a third sector organisation is commissioned to specifically deliver advocacy in efforts to minimise the crossover with (and thus conflicting interests or dual relationships) other professional obligations (Thomas et al., 2016).

This does not preclude acts of advocacy for EPs, but presents challenges in undertaking advocacy in line with advocacy principles, with the National Advocacy Standards (Appendix J), advising services are independent (DoH, 2002). This differentiation is important as a key aspect of advocacy practice is not to work in what is believed to be in a party’s (here the child’s) best interest, but rather to represent their views (DoH, 2002). This will unequivocally pose a challenge to EPs, who have a clearly defined remit to provide psychological advice for statutory EHCP assessments. In their other ‘preventative’ or intervention work, EPs will aim to build capacity in educational institutions around creating understanding and support for SEND, largely through consultative approaches, though it should be noted that in EPs can work in a therapeutic capacity directly with children and young people where an advocacy role might become more possible.

Such challenges were highlighted by EPs, characterised by one EP as the ‘swampy lowlands of practice’, but indicative of accounts provided by all EPs, where he recognised the EPs’ role in promoting best interest principles based on an underlying belief that children should receive an education (Chapter 5). Importantly, some EPs put forward the claim that while they could advocate, they were not advocates, crucially offering a differentiation between practices which could be perceived to be advocacy and being an advocate. For
example, EPs drew extensively on their efforts to include children and young people’s views, particularly through person-centred planning (PCP), which has the scope for EPs to elevate the voices children and young people’s, enabling them to contribute to decision making, indicative of common advocacy practice where an advocate may attend a meeting on a child or young person’s behalf. However, EPs will need to be mindful of the role they occupy as accounts analysed for Chapter 6 illustrated how EPs may not work directly with children and young people, or how EPs are focused on what they see a child needs rather than what they say they want, precluding EPs from advocating on their behalf. Similarly, analysis in Chapter 8 explicated the need to relinquish ordinary EP activity in order to provide advocacy, thus demonstrating the self-interrogation required in taking on an advocacy role.

This opens up discussion on how EPs can undertake advocacy, in also trying to be clear that the purpose of this discussion is not to discredit acts or opportunities of advocating undertaken by EPs. For instance, EPs demonstrated how they can challenge the perspectives of other professionals in achieving change for children and young people, largely evident in how EPs provided critique of the limitations of voice for this thesis. Nevertheless, EPs do not have a demarcated advocacy role, which has echoes of the performativity of ‘views’ and ‘voice’, mobilised as a signifier of the UNCRC, but not representing the full remit of Article 12. In much the same way, advocacy intersects with participation, where advocating takes on a performative quality but may not be indicative of the full requirements of advocacy.

Going beyond performative expressions of advocacy is integral to strengthening the realisation of children’s rights. For example, the provision of independent or issue-based advocacy has the benefit of sourcing support from an individual external to the situation, who is employed only to advocate and convey the child or young person’s views. Circumventing independent advocacy may limit how certain narratives are perceived and risks placing these narratives vulnerable to psychologised discourses where what is advocated for becomes mediated by evaluations of need. Furthermore, independent advocacy for children and young people with SEND is limited, with statutory advocacy provision neglecting SEND, thus creating a gap for inviting EPs (or other professionals or family members) to advocate. Consequently, this positioning of advocacy paradoxically represents a system of exclusion where advocacy is denied to children and young people with SEND. Instead, the advocacy role for EPs could potentially being one of advocating for advocacy provision.

**Formation of Concepts**

Foucault’s (1972) account of the formation of concepts entails examination of how certain concepts lead to the production of new later concepts. I took up this idea in relation to how the advent of the UNCRC produced ideas of children’s voice. Thus, ‘statements formulated elsewhere and taken up in a discourse’ (p.64) comprise
the discursive field. Attention is required to concepts seen to be truthful, criticised and those rejected and excluded. Also to be included are those statements that concern and belong to a different domain of objects and discourse, but are present and circulating within the discourse under analysis (Foucault, 1972). This analysis was applied to exploring how EPs mobilised discourses of rights in constituting their practice, particularly in how they established a language of rights, subsequently unearthing how EPs incorporate these understandings of rights into their practice.

**Language of Rights**

The analysis in Chapter 5 drew attention to how EPs, in their accounts, deployed a series of concepts representative of the wider human rights discourse in explicating their understanding of the UNCRC. This ranged from claims to rights being ‘expected’, ‘inalienable’ and ‘non-contingent’ to ‘aspirational’, discourses arguably common to and belonging to the discursive field of human rights. Such discourses can be readily co-opted into a children’s rights discourse due to an array of shared discursive resources and signifiers common to conventions of rights. For example women’s rights, disability rights, and of course, human rights, where rights discourses are mobilised giving it a ‘high normative force that demands our attention’ (Campbell, 2003) p.3) producing a powerful effect, so enhancing the status of children’s (or other rights) rights (Holzscheiter, 2010).

However, there are key differences in the legal power behind rights frameworks. As Foucault argues, discourses take on common understandings and usage and are deployed, yet risk transforming into something else (Foucault, 1972). Rights discourses are applied to children’s rights, yet the UNCRC represents a different practice of rights to other rights charters, for example, human rights or protected categories, such as gender, disability, race and sexuality, are protected under a domestic law framework, through the Equality Act (2010) or the Human Rights Act 1998. As (political) minors, children are unable to make legal challenges in their own right on the basis of the UNCRC. Specifically, the UK has not incorporated the UNCRC into domestic law preventing challenges through the UK court system on the basis of the UNCRC, alongside failing to sign up to the UNCRC optional protocol allowing children to make complaints directly to the UN. Children thus are not positioned within the normative legal category of ‘person’, denying them entry to a world that is built for adults (Raitt, 2005). Consequently, the weight of human rights discourse is put behind children’s rights, but is only peformatively constituted as the meaning of descriptors such as inalienable are not reflective of the legislative frameworks underpinning the UNCRC in England.

This, therefore, is indicative of a system where rights frameworks themselves are hierarchical, reproduced throughout practices where children’s rights remain subjugated representing a system of rules which act as
system of exclusion (Hook, 2001). The effect being, as the analysis in thesis has illuminated, is that despite availability of a language of rights, children’s rights claims remain susceptible to adult and institutional demands imposed by institutional structures and expectations. Thus, illustrating continuing concerns regarding the implementation of the UNCRC (Coppock & Phillips, 2013; Quennerstedt et al., 2018; Tisdall, 2018), particularly where it appears children’s rights can be infringed upon through both formal and informal procedures and practices (Tisdall, 2018), where children’s views are overlooked in favour of protectionist approaches to rights enactment (Warrington & Larkins, 2019).

**Knowledge of Children’s Rights and the UNCRC**

Underpinning addressing children’s rights inequities is children’s rights knowledge, forming a key rationale guiding thesis. I have drawn attention to how certain discourses of rights have been used performatively, potentially giving power to children’s rights, but also having the effect of obscuring the meanings of the discourse that are beneath the surface.

What emerged from the analysis for this thesis, is how EPs were generally drawn to Articles which connected with their professional role, for example, establishing children’s views, the right to education, best interest and parental rights, as set out in Chapter 5. However, this at points was to the exclusion of, other Articles, such 13 and 17, also integral to children’s participation and, crucially, the requirement to give ‘due weight’ to children’s views in accordance with their age and maturity, the later, and often forgotten part of Article 12 (see Lundy, 2007; Daly, 2018). This is indicative of a prevailing limiting of the scope of Article 12 and firmly positions children’s rights as being contingent on adults’ views of capacity or beliefs about best interest (Tisdall, 2018), often mediated, as can be seen in the analysis in Chapter 5, by concerns for children’s needs at the expense of their views. Daly (2018) identifies that there is no framework to measure due weight where children’s views are often heard, but discounted. I would argue that the concept of ‘due weight’, yet to be determined, is an underrepresented and under-theorised aspect of children’s rights and participation, which requires further exploration. Warrington and Larkins (2019) argue that best interest and participation is a ‘false juxtaposition’, where evaluation of best interests should be informed by children’s views. However, this does not consider how pervasive beliefs about children’s competence and capacity produce regulating and psychologised practices (Rose, 1985)which retain children’s subject positions as incapable, all arguably not possible to ‘measure’ in determining how to give ‘weight’ to views.

In countering such views Tisdall (2018) usefully draws on a discussion by Series (2015), which challenges notions of ‘mental incapacity’ through individual deficit can calls for legal capacity to be considered and understood as constructed by their environment and relationships. In this way capacity is not located as the
problem of the individual but their context, with the primary focus being on the support needed to enable individuals to exercise their legal capacity as opposed to individual rationality (Tisdall, 2018).

The idea of thinking a child in context is not a new one, indeed, is common to educational psychology practice, and underpins frameworks of consultation integral to EP practice (Leadbetter, 2000; Leadbetter, 2006; Nolan and Moreland, 2014; Wagner, 2000). However, what Series (2015) is suggesting is a rejection of the argument of ‘best interest’ through determinations of incapacity and non-consensual interventions, in favour of examination of ‘external determinants of disablement, vulnerability and risk’ (p.89). While, such thinking is illustrative of social model perspectives on disability (Barnes, 2019; Shakespeare, 2013), where disability arises from disabling contexts, notions rarely and explicitly applied to determining the best interests of children and young people and is largely left out of the literature on Article 12 and children’s participation. Notwithstanding, ongoing criticism of the lack of application of disability rights and theory to SEND policy in the UK (Keil et al., 2006; Sayers, 2018).

In building on these ideas, this is where extending understandings of children’s participation beyond being conceptualised and enacted predominantly through Article 12, to incorporate Articles (13, 14 and 17) which outline the importance of providing information to facilitate children’s participation. This, I would argue, has the scope to shift the responsibility from a child’s individual capacity to the institutional structures positioned to enable a child’s participation. While, this may not address the ‘measuring’ of due weight per se, it does give rise to a level of accountability regarding the measures in place to enable a child’s involvement and inclusion.

Voice and views

Knowledge of rights and the dominance of certain practices, such as the requirement to give due weight, is further subjugated by proclivity towards statements of commitment to voice and views discourse, at the expense of other practices. The statement of voice itself is indicative of how Foucault describes the formation of a concept, meaning the signifier of voice does not appear in the UNCRC, yet has become synonymous with claims to children’s participatory rights (Lundy, 2007; Percy-Smith, 2011). Thus, voice is a statement ‘formulated elsewhere and taken up in a discourse’, seen to be true, but is constituted by other discourses (Foucault, 1972; p.64).

Paradoxically, despite the overwhelming prevalence strength of the voice and views discourse, EPs did interrogate and problematize its use. Voice was viewed by one EP as a mechanism for the exercise of a kind of tokenism that had hierarchical and patriarchal effects, which simplified participatory practice. This positions voice as having echoes of participatory practice seen to be tokenistic and a reduction of what participatory
practice could represent, being situated lower down Hart’s influential Ladder of Participation where views are gathered but not acted upon (Hart, 1992).

In further interrogation of the ambiguities and varieties of uses of voice Chapter 6 explores the ways in which voice was problematized, described by one EP as a form of violence where what happened to ‘voice’ was often unclear. Opening up the discourse of voice in relation to other systems of discourse extends understandings of the effects of the voice discourse. In likening voice as violence to what Gayatri Spivak called ‘epistemic violence’ in her text ‘Can the Subaltern Speak?’ (Spivak, 1988), the silencing of certain knowledges through the epistemic violence of certain groups in the privileging of others (Dotson, 2011) was made explicit. Thus, voice becomes more than a regulatory and tokenistic practice, but can also be seen to work as an oppressive and marginalising one over which children and young people often have no control.

**Formation of Strategies**

Foucault describes how discursive formations are constituted through the organisation of objects, concepts and enunciative modalities, giving rise to the formation of strategies. Strategies, according to Foucault (1972), are themes and theories, thus a strategy will be likely to be formalised procedures and processes commonly known, or even explicitly named as ‘strategies’. Through my analysis of the rules, systems and language of discourse I have identified a series of discursive strategies mobilised around work with children and young people; participation, consent and co-research. Strategies are determined by ‘points of diffraction of discourses’ (Foucault, 1972; p.73). These points might be initially considered to be incompatible, referring to different objects, concepts or enunciation. At the same time, they can be characterised as uniform due to being created under the same set of rules and presented as alternatives to each other, but also can take on different levels of importance (Foucault, 1972).

This is how a system of exclusion emerges, with Foucault (1972) arguing how it is the entire group of relations at play that either permit or exclude certain statements within a discourse. Certain statements or discourses operate and are justified at one level, but are excluded by discursive practices at a higher level or space. Consequently, a discursive formation does not occupy all the spaces available due to the exclusion of certain strategic choices (Foucault, 1972).

**Children’s Participation – giving views due weight**

Children’s participation could be regarded, in Foucauldian terms, as a central strategy of children’s rights. This stems from the UNCRC itself, which highlights children’s participatory rights as being a guiding principle in
upholding other rights (UNICEF, 2021). Furthermore, the analysis EPs’ accounts across this thesis has given rise the identification of practices and strategies deployed as examples of rights-informed practice.

The work of this thesis suggests, particularly through analysis of EPs accounts of their participatory practice in Chapter 6, that children’s participation beyond notions of views, such as due weight, I would argue, remains largely limited in UK policy and practice discourse (see Daly, 2018). This is despite wide-reaching criticism and debate regarding the operation of participatory practices and the continuing maintenance of what is often described as tokenistic practice (Seim & Slettebø, 2011, 2011; Lundy, 2007; Lundy, 2018; Gillett-Swan and Sargeant, 2019). EPs accounts drew attention to limitations in their participatory practice, outlining concerns where they were unaware of what happened to children’s views and voice, which, could be considered as a mechanism of exclusion.

**Consultation**

EPs did not only mobilise a views and voice discourse, but drew extensively on notions of consultation. Typically, EPs work within (what they call) a consultative model, a term also shared by the participatory discourse. Consultation within EP practice and children’s participation can be understood as ‘points of diffraction of discourses’ (Foucault, 1972; p.73) where two statements within the discourse can be seen as being incompatible, but also referring to one and the same object. Consultation within educational psychology practice aims to work more systemically and address school-wide issues (Cameron, 2006; Wagner, 2000; Leadbetter, 2006) undertaking ecological approaches to achieve social change through addressing inequities across systems (Williams and Greenleaf, 2012) through collaborative work and joint assessment and review (Lather, 2000). The principles of practice can easily align with values inherent to children’s participation. In contrast, consultation with children and young people is regarded as a lesser form of participatory practice if we are to use popular frameworks such as Hart’s Ladder (1992) as benchmarks.

The analysis in Chapter 6 analysed the way in which consultation, within the context of children’s participation, is often problematized, alongside drawing attention to how EPs understood consultation practices. In particular, I highlighted EP’s accounts of how consultation missed opportunities to include children and young people in other aspects of the process, such as agenda setting with EPs stating a need to involve children and young people in the whole process. By pursuing practices, which counter more top-down approaches to participation, EPs could establish stronger commitments to create bottom-up approaches both in terms of ensuring children inform the direction of participation, but in understanding the lived experience of rights from children’s perspectives (Harcourt and Hägglund, 2013) and facilitating children and young people to be what Larkins et al. (2015) described as ‘protagonists’ in their own lives.
The work of this thesis highlighted person-centred planning (PCP) as mechanism of practice, or strategy, utilised by EPs, which comprises a range of elements indicative of children’s participation, for example, ensuring children and young people’s views are included in decision making (DfE and DfH, 2015) and shifting operations of power from professionals to children, young people and their families (Ratti et al., 2016). For EPs, PCP represented a more developed form of participation where PCP was juxtaposed against less robust forms of participation such as just seeking views or consulting, underpinned by policy commitments of ‘high quality engagement with child and parents’ (section 9.7) (BPS, 2015; p.7). However, PCP is subject to the same rules, systems and practices present within children’s participation. Irrespective of PCP’s underlying premise, its person-centredness can be ambiguous (O’Connor et al., 2019; Press et al., 2012; Uniacke et al., 2018). This thesis illustrated how a child or young person was located by EPs within the planning compared to other PCP participants unclear, with PCP, as set out in the CoP (DfE and DfH, 2015) likened by one EP, and said to privilege, family-centred planning (FCP). This is not to say that FCP enactments of PCP infringes on children’s rights; rather, the opposite if the UNCRC is to be understood as a convention which also sets out the commitments to parental rights and responsibilities to children and young people. Therefore, in some respects, this responds to critique of children’s autonomy and agency, which fail to recognise the interconnectedness of relationships between adults, parents [and carers] and children (Roche, 1999). For instance, discourses of autonomy circulating within children’s rights discourse have been argued to not account for how decision making is seldom taken individually (Coyne and Harder, 2011)

Nevertheless, it is acknowledged that FCP may result in children or young people having a less involved role, with the child’s wishes circumvented in favour parental views on best interest (Ford et al., 2018), thus returning to earlier arguments in this chapter regarding children’s capacity and the ways in which their views are given ‘due weight’. Consequently, PCP under the guise of FCP risks evoking best interest and paternalistic practices that also risk children’s expressed views being overlooked in favour of the privileging of adult perspectives (Tisdall, 2016). Thus, it is argued by Press et al. (2012) that collaborative programming must be extended to counteract practices which may unintentionally subjugate children’s views. In this sense PCP becomes another enactment of children’s participation where practice sits across a continuum ranging from mechanisms viewed to be tokenistic, that risk failing to promote children’s involvement in decision making.

Consent

Consent represents a site of practice to explore, interrogate and unearth discourses illustrative of children’s rights and participation. Consent was specifically focused on and introduce into interviews with EPs in an effort
to extend thinking around children’s participatory rights. Consent is inherently connected to rights as ‘a manifestation of an individual’s right of freedom under the law, such as human rights law’ (Van der Hof, 2016; p.110). In ensuring children’s rights, consent is illustrative of children’s views being given due weight in administrative and judicial process, such as healthcare (Alderson, 2017). Consent, in the same way as narratives around children’s participatory rights, traverses constructions of children’s competence and capability (Alderson and Goodwin, 1993; Perera, 2008), with a child’s right to consent shifting based on age-defined rules and categories of competence, for example children’s criminal competence at age 10 (Fergusson, 2007; Gillen, 2006) and capacity to consent to sexual activity being at age 16 (Coy et al., 2013; Cense et al., 2018; Whittington, 2020).

As reviewed in Chapter 9, consent, as a decision-making practice, can be overruled by perceptions of best interest (Coyne and Harder, 2011; Elliston, 2007) being subject to deficit discourses that maintain children’s incapacity (Tisdall, 2018; Wyness, 2019), indicative of commonly held views that limit children’s participatory practices. However, consent within a practice context, in this case, educational psychology, is at the discretion of the practitioner and often privileges parental consent. For example, BPS Practice Guidelines (2018) promote informed consent, however, in practice consent is often gained from parents, with only assent, a more diminished version of consent, secured from children.

In this way consent represents a discontinuity within children’s rights practice. Consent is not specifically discussed in the UNCRC (UNICEF, 1989), but is identified as being illustrative of children’s participatory rights, for instance, children and young people making choices about their inclusion research, medical procedures or sexual consent. Nevertheless, consent is not typically considered within a framework of rights in relation to service provision, thus posing the question as to whether not including children and young people in relevant consent processes is an infringement of their rights echoing what Series (2015) described as ‘non-consensual intervention’ (p.89).

Consent, therefore, offers an exemplar of how certain rights can be infringed upon. Critically, in remaining committed to shifts away from where the EP was perceived to be doing things to and for children rather than with them (Burden, 1996; Farrell, 2010) then revising how consent is undertaken would go some way to further addressing these concerns, in countering practices where children are the object of investigation. I would argue that EPs will continue to face challenges in this respect, particularly, as highlighted in Chapter 5, navigating ethical dilemmas in the ‘swampy lowlands of practice’ in evaluating needs and rights, where work is undertaken to address issues at a systemic level with schools rather than directly with children, however, this is a particular practice problem that EPs will need to interrogate more closely if to develop more rights-informed approaches to practice.
Moving towards Actualisation of Children’s Rights

This thesis has illustrated how practices, typically considered to be indicative of the UNCRC, can still have exclusionary and regulating effects. The analysis of discourse has revealed a tendency to privilege adult perspectives. Thus, rather than countering paternalistic understandings of childhood, certain interpretations of the UNCRC continue to position children as ‘other’ to adults, locating children as objects of inquiry and intervention rather than collaborators and partners. EPs accounts explored a range of discourses, particularly exploring meanings of rights, participation, views, voice, advocacy, consent and co-research. EPs offered significant interrogation of these terms, illustrating the capacity of rights informed practice to further develop in educational psychology.

Reflexivity

The claims of this thesis, including the production and selection of material has been shaped and considered through my own reflexivity regarding how I have understood and enacted the UNCRC. In writing this thesis, this reflexivity extended beyond how I constructed and informed the process of the research, but led me to consider further, my own positioning with regard to how I viewed the status of the UNCRC, which I found shifted throughout the journey of the thesis. In particular I have typically worked within a system also focused on implementation, operating within an unquestioning practice context with regards to the status of the UNCRC, where I strived towards enhancing and improving children’s participatory practice. In contrast, my own self-reflexivity has led me to consider my own limitations in knowledge and practice concerning the UNCRC. In this way, this doctoral research has been a journey of joint critique and theorisation of the UNCRC and wider rights discourse.

In considering the status of the UNCRC, I have come to understand how I have subscribed to the universality and hegemony of the UNCRC. This is through being positioned in a practice context, my first professional employment working with children and young people, which had its foundations informed by the UNCRC. Thus, introducing me to a practice context wherein knowledge and practice informed by the UNCRC was routinely enacted within regular daily practice. The strong focus on the promotion of rights informed practice somewhat obscured me from consideration that the UNCRC did not necessarily form part of core practice of all practitioners, which was a realisation early on in my thesis that in some respects came as a surprise. Conversely, however, in being a children’s rights advocate and participation worker, championing a rights discourse, meant I would commonly be engaged with practitioners using a rights informed dialogue, which arguably created an illusion of a the presence of more robust rights informed practices.
However, this led me to reflect on the knowledge I possessed regarding the UNCRC prior to this doctoral research, which informed the analysis of the discourses available in this research. Notably, in Chapter 3, through discussion of my positioning as a researcher and the parallels this had with my role as an advocate where I considered myself as an outsider. I came to understand how locating myself outside of LA practice, as a children’s rights advocate, informed how I viewed practitioners, including EPs, who were subject to LA processes and institutional discourses, which constituted their role and its remit. My practice role led me to take up a position in opposition to LA based practitioners. In particular, I have considered how, in past practice working with care leavers, I faced many challenges where despite claims by care leavers of not being listened to, receiving information or being involved in decisions, those in positions of power overwhelmingly countered this with accounts of how practitioners did listen to the needs and concerns expressed by young people with regard to the support they received as care leavers. This was thrown into stark relief, where some years ago, prior to this doctoral research, the LA held steadfast on the work they undertook for care leavers, in the face of multiple critical accounts from care leavers and highly problematic national system typically seen to fail care leavers, resulting in this LA later being highly criticised for their services for care leavers in a later inspection. Such experiences had a validating effect in my practice, however, on concluding this thesis, the nuance and self-reflective critique of rights informed practices by the EP participants in this doctoral research countered this belief and self-positioning and informed my own understandings of how rights informed practices can be developed. Specifically, this doctoral research enabled me to consider the value of developing a more rights informed reflexivity, where individual practitioners work to counter institutional practices with moments of challenge and advocacy through elevating and holding high children’s views and voices. Engaging in this research has enabled me to continue to consider the value of how knowledge of children’s rights has enabled increased reflexivity in being able to navigate such tensions as was illustrated by EPs in this doctoral research.

**Implications for Policy and Practice**

I would argue that progression of the UNCRC in England, and the wider UK, should begin with strengthening UNCRC knowledge across the children and young people’s workforce. This holds particular significance as children’s recourse to challenge infringements of their rights remains particularly limited, due to the failure of the UK government to incorporate the UNCRC into domestic law (CRAE, 2021). Notably, since this research commenced, Scotland have progressed the UNCRC Bill through Scottish Parliament with the view to incorporating the UNCRC into domestic law making them the first devolved nation to do so (CYP Now, 2021; Scottish Parliament, 2021).

On a national level it is important to emphasise how Article 42 of the UNCRC (UNICEF, 1989) specifies that:
States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Therefore, this doctoral research questions if this duty is being undertaken to its full extent, if professional EP practitioners remain unclear about the status of the UNCRC. For example, though the UK Government is the primary duty bearer levels of compliance have been found to be low at the state level, with limited political motivation and lack of priority regarding the realisation of children’s rights being seen as challenges within UNCRC compliance, arguing that community actors can positively influence government compliance, their contributions can be thwarted within a non-compliance system with poor child friendly systems creating barriers to participation (Gray, 2022). This suggests that there may be a disconnection between what could be described as a bottom up or even more grass roots approach, which undeniably has value and is an important mechanism within children’s rights advocacy and activism, highlighted through child and young person led and co-produced projects (Larkins et al., 2015). Nevertheless, this raises the question of whether such projects will continue to be mobilised if the UNCRC does not remain at the forefront of the political agenda where policy and practitioners, as illustrated in this doctoral research, do not possess the relevant children’s rights knowledge. This points to a need for greater top-down commitment. This concern is intensified further if we recall how, as found in the academic literature, research has tended to focus on participatory mechanisms and children’s understanding of rights (Larkins et al., 2015; Lundy, 2007), rather than practitioner knowledge.

It was not the aim of this thesis to specifically challenge the UK government’s rights strategy, though undeniably incorporating the UNCRC into domestic law would offer children and young people greater protections and greater capacity to become ‘protagonists’ in their own lives (Larkins et al., 2015) and to become rights holders who enact rights themselves. Therefore, in practicing within the current conditions, knowledge of UNCRC enactment, and its limitations, will better equip EPs to advocate in a rights-informed way, going beyond relying on performative expressions of human rights discourse. Greater awareness may enable EPs to illustrate how and when children’s rights are being infringed upon or when their rights have become contingent or conditional on adult orientated perspectives. This has particular social justice concerns relevant to their practice, such as the disproportionate exclusion of children and young people with SEND (CRAE, 2018) and concerns around the extent of children and young people with disabilities participation in decisions about their lives (CRC, 2016), illustrating a need for a working within a rights framework in these arenas.

How EPs account for their understanding and enactment of the UNCRC is significant given the absence of a nationally backed rights wide policy in the England, with duty bearers within England likely to draw on diverse
and pervasive institutional and professional discourses in ‘enacting’ children’s rights. The loose and arguably much debated ‘due consideration’ of rights is left open for significant interpretation, thus EPs should explore what ‘due consideration’ means in the context of educational psychology. The challenges of establishing a strategy of rights is further compounded through the partial governance of educational psychology through the CoP, which I have argued, along with Sayers (2018) continues to limit children’s rights. This suggests there is space for EPs to use their professional affiliations as a platform to advocate for a shift towards a more rights informed discourse, which might hold the potential to finally transform the SEND system. The academic literature identifies how EPs can contribute to strategic change (Fallon et al., 2010), thus, activities such as these speak to EPs positioning of their role as advocates and EPs could use findings from this thesis to shape advocacy activity. One key example would be strengthening the legislative provision of advocacy for children and young people with SEND or those who are excluded from school to attempt to make inroads into the particularly pressured system for children and young people with SEND who continue to be subject to exclusionary and paternalistic practices, subjugating their views and involvement. In doing this EPs will be better equipped to undertake policy advocacy with the aim of strengthening children’s rights and entitlements both at local and national levels.

Such an endeavour is likely to require training, with specific and detailed children’s rights knowledge to strengthen the capacity of EPs to respond to potential or actual rights infringements. As far as I am aware, a national strategy or training on the UNCRC in the UK does not exist, therefore, regular access to facilitated capacity building initiatives around children’s rights are likely to be scarce, though there are a plethora of online resources. Correspondingly, within my own practice experiences, access to training and development related to children’s rights was restricted to the needs of specific roles, for example, training on participatory practice when working as a participation worker. Other exposure to the UNCRC was typically within wider training the legislative context for children in the UK.

This is not to presume that EPs have no exposure to training, or knowledge and information on children’s rights, indeed, have access to conference attendance and the UNCRC is evident in EP doctoral training. However, criticism of UNCRC enactment is the focus on implementation strategies, without problematization and theorisation of children’s rights (Quennerstedt, 2013), giving rise to a requirement for training on the foundations of the UNCRC in order to facilitate a critical dialogue around its assumptions and practice effects.

Equally, there was evident commitment to rights-informed ways of thinking and engagement in debates on tensions of protection and participation across EP accounts. As can be seen in Chapter 6, EPs outlined a raft of practices aimed at establishing the views of children and young people, alongside recognition of the tensions which existed in navigating the ethical issues encapsulated in rights-based work. EPs narrated their
commitment to establishing children’s views in shifting dominant narratives with concerns around issues of tokenistic practice, particularly in relation to views and voice, represented across all EPs’ accounts. This suggests that EPs should take opportunities to develop the scope of how Article 12 and other participatory Articles are incorporated into their practice. At present, I would argue that this is compounded by a lack of availability of discursive resources, due to a diluted rights discourse in educational psychology and SEND policy texts where the UNCRC is largely underrepresented. Consequently, EPs I would suggest are exposed to a restricted set of resources in enabling them to mobilise a discourse of rights. Thus, EPs are presented with a dilemma where they aim to enact a problematic rights framework without problematization or interrogation of dilemmas rights frameworks can present.

This gives rise to a need for greater attention to what is required to develop EPs and all children’s workforce practitioners’ capacity to build knowledge and think critically about children’s rights. Larkins et al. (2015), through a critical intergenerational dialogue research project, collaborated with children and young people to facilitate critical children’s rights research from below in enabling children and young people to become their own children’s rights protagonists. Findings from the research illustrated how the children and young people drew on their children’s rights knowledge to challenge concerns in their own school environment. This suggests that education and knowledge around children’s rights, which enable the mobilisation of children’s rights knowledge can have transformative effects or at least stimulate discussions that shift perspectives around children’s rights. I would argue that facilitating EPs and other practitioners to incorporate rights discourses into a critical dialogue of practice has the scope to build frameworks of reflection built on the UNCRC. As can be shown in the discussion on the ‘swampy lowlands of practice’ in Chapter 5, the tension between acting on children’s views and working in their best interest is a practice dilemma to be addressed, which could be developed through drawing on the principles of the UNCRC to underpin reflective practice.

**Knowledge Contributions**

This thesis sought to contribute to how the UNCRC is understood and enacted, with a specific focus on EPs as a key professional working with children and young people. The findings of this thesis arose from a FDA of how a sample of eight EPs’ account their understanding and enactment of the UNCRC. However, the findings have wider implications due to the limited availability of research on how professionals understand and enact the UNCRC. This emphasis on the accounts of EPs’ knowledge and understanding generated and analysed here is within a context of limited available research on practitioner knowledge and understanding. Crucially, this doctoral research draws attention to a vital research and knowledge gap, with implications for both practitioners and the status of the UNCRC in England and in some respects, the wider UK.
On a national level this doctoral research points to a need to undertake more research regarding UNCRC practitioner knowledge if the UK are going to fulfil its obligations to upholding the UNCRC (UNICEF, 1989). While it is beyond the scope of this doctoral research to evaluate UK compliance with the UNCRC, research pointing to issues regarding the robustness of how the UK upholds the UNCRC (Gray, 2022), which alongside the limited research regarding practitioner knowledge of the UNCRC, would suggest limited practitioner knowledge could be an effect of wider problems with top-down commitment to the UNCRC.

Though the findings of this doctoral research should be considered in the context of the conditions in which the data was collected, specifically the subjectivities of the researcher and those researched, the interviews, and the discourses identified, it can be argued that the EPs reproduced the institutional discourses they are situated within. This indicates to some degree, as some of EPs suggest, that the UNCRC has not maintained what has been described as a hegemonic status (Cordero Arce, 2015). More importantly, this doctoral research emphasises how the UNCRC is competing against other, possibly more dominant discourses, which also both operate independently and interdependently, for instance PCP. The way in which PCP can also be positioned as a way to strengthen the realisation of children’s rights, but could also equally operate in a less rights informed way (Ford et al., 2018), since they are subject to being constituted by discourse such as need which may reconfigure its emancipatory aim. In the same way as practices seen to be informed by the UNCRC, such as children’s participation, children’s status and agency remains vulnerable reinforcing children’s subjugated status (Cordero Arce, 2015; Prout, 2005). The EPs in this doctoral research helpfully illuminated how practices aimed at enhancing children’s rights or elevating their views could have alternative effects and risk restricting or limiting their views and involvement in some way. Therefore, this doctoral research has drawn attention to how a re-focusing on the UNCRC is required if rights informed practice is to be further developed.

Alternatively, the gap in knowledge regarding the UNCRC suggests normative and uncritical understandings have led to the UNCRC’s unquestioned status, consequently failing to ensure practitioners have full knowledge of the UNCRC being largely absent from policy and practice discourse, resulting in its status remaining ambiguous. Though it can be argued that the UNCRC has become an established practice norm through its acceptance and regular and frequent deployment through policy, its hegemony may have the unintended effect of assuming the UNCRC has retained status in the face of competing discourses of need. Thus, this doctoral research has re-emphasised the need for continued research on the UNCRC, particularly in relation to practitioner knowledge and understanding.

Nevertheless, this doctoral research also highlighted how EPs engaged in illuminating and insightful debates around the UNCRC and the wider tensions within children’s rights and participatory practice. This, conversely,
emphasised the knowledge and understanding available within EP practice in the face of limiting policy discourses which seek to potentially de-emphasise rights in favour of more obviously psychological (rather than legal) discourses such as needs, views and person-centredness. Therefore, this doctoral research illustrates how specific debate on children’s rights has the scope for developing and building a rights informed reflexivity. Thus, findings illuminate what working within a framework of rights could offer in continuing the dialogue of rights, also emphasising how the UNCRC is not the end of the rights debate.

Furthermore, EPs identify in this doctoral research and in the literature with being advocates for children and young people. Importantly, and unsurprisingly, EPs strive to improve the lives of children and young people, particularly in relation to their educational achievements. However, advocacy as a practice, has not been conceptualised within educational psychology and therefore, EPs as advocates and advocating remains performative in nature. This is not to suggest that EPs cannot and do not advocate for children and young people, indeed this doctoral research illuminated how EPs work to elevate children and young people’s views, however, this is often in terms of shifting the narrative with regard to understanding of children’s needs to ensure their best interests, and not necessarily based on children’s views. This doctoral research offers a theoretical conceptualisation of advocacy in appreciation of the role and possibilities of practitioner advocacy and also the development of children and young people’s self-advocacy in the advancement of children’s rights. Importantly, for EPs, this doctoral research could offer clarity as to how they can undertake advocacy or to warrant to develop their advocacy role further.

**Methodological Contributions**

At the point of writing this thesis, no research has been identified which critically dissects and analyses how certain practices seen to be informed by the UNCRC, such as children’s views, participation, advocacy, are constituted within practitioner discourse. Discourse research has typically focused on legislative processes and policy (James, 2008), drafting of the UNCRC (Holzscheiter, 2010), participation (Kallio, 2012; Skelton, 2008) and wider theorisation of children’s rights and the status of the UNCRC (Cordero Arce, 2012; Cordero Arce, 2015; Gadda, 2008; Gallagher, 2008; Quennerstedt et al., 2018). Alongside a dearth of research on practitioner views of the UNCRC, as far as can be seen, no discourse analytic research has been undertaken of practitioners’ views and their accounts of their understanding and enactment of the UNCRC. Thus, this thesis contributes methodologically to both the fields of children’s rights and discourse analytic research.

In responding to critiques outlined in Chapter 3 concerning the lack of theorisation of children’s rights in research (Cordero Arce, 2015; Quennerstedt, 2013; Reynaert, et al., 2012), this thesis drew on FDA to critically explore the accounts of EPs’ understanding and enactment of the UNCRC. Specifically, discourse analysis
research critiqued and theorised a number of terms associated with the UNCRC and broader children’s rights, for example, advocacy, consultation, views and participation, which has provided greater conceptual clarity and theorisation regarding how these terms operate within educational psychology.

The FDA demonstrated what discursive approaches have to offer in terms of analysing, critiquing and exploring children’s rights discourse as they function within practitioner accounts. The EP participants engaged with this process in narrating a critical examination of a range of concepts related to children’s rights, for instance, violence in voice and the ‘swampy lowlands of practice’, allowing for examination of how certain concepts and strategies are deployed in the formation of a discourse (Foucault, 1972) of rights. Notably, EPs critiqued terms and self-critiqued practice, particularly in relation to participatory practices and advocacy, illuminating how discourse analysis can offer greater conceptualisation of practices seen to have become normative terms and processes. This demonstrates how research grounded in critical and theoretical engagement opens space for critical reflexivity in practice. Thus, EPs could use approaches, such as FDA, which aim to identify gaps and discontinuities, or ‘problematizing moments’ (Bacchi, 2012) to be able to explore possible spaces for infringement of children’s rights.

Limitations

Using Foucault’s Archaeology facilitates a contribution towards knowledge through revealing practices perceived as universal as contingent on social conditions, illustrating how certain knowledges create social practices in demarcating what is possible in particular contexts (Garrity, 2010). Therefore, the claims made in this research are not presumed to represent educational psychology as a whole, but are indicative of a particular set of conditions and claims made by EPs as constituted within the context of this research, which produced the accounts narrative by EPs of their practice. Therefore, FDA offers a series of accounts of a particular set of subject positions within discourse and power (Arribas-Ayllón and Walkerdine, 2017).

It could be said that the smaller sample size has also contributed to the representativeness of the findings, and the ways in which the discourses analysed are used to understand educational psychology as a whole. As noted in Chapter 4, a small sample size is typical in qualitative research (Willig, 2008) with a sample of 4-6 appropriate sample size for discourse analysis (Parker, 2005). It can be argued that smaller sample sizes offer less analytical robustness (Geuterman, 2015), though there is also a recognition of a lack of clarity regarding what an appropriate sample size looks like in qualitative research with this dependent on a series of factors, including research questions, subject discipline and epistemological framework (Young and Casey, 2019). It is argued that a small sample of participants can provide adequate information power within projects with undertaking in-depth analysis of narratives or discourse, with a purposive but smaller sample still elucidating...
diverse experiences. The aim is not necessarily to cover a full range of phenomena but to identify pertinent patterns relevant to the research aim, with single participants who elucidate and insightfully narrate relevant issues being able to offer important issues and variations in practice (Malterud et al., 2015). However, crucially, for this thesis and discourse analysis the aim was not generalise findings, but to understand how knowledge produced by EPs can be useful to those located in other contexts. Thus, this sample produced specific contextualised knowledge, which could have implications or illuminate understanding in other settings, yet is limited in that it cannot be generalised to across the educational psychology context.

A particularly pertinent point is the objective of the research itself orchestrated a set of conditions for EPs to reflect and respond to children’s rights concerns. In this way, EPs were constructing their own subject positions in relation to what they may believe was expected by the researcher, particularly if considered in the context of the ethical and value judgements associated with working in a rights informed way. EPs may both be performing versions of children’s rights knowledge in ways they perceive to be expected from them or both demonstrating their own expertise on the subject.

Furthermore, these claims are situated within a particular time period, notably shortly after the advent of the CoP. EPs were responding to a particular set of demands which arose from the implementation of new statutory guidance, and thus in a later time period or following developments in institutional practices in response to this guidance, EPs may reflect differently on practices associated to the CoP aimed to strengthen children’s rights, such as PCP, illustrating how what can be written, spoken or thought in relation to a social practice or object arises from the conditions of a particular historical period (Arribas-Ayllon and Walkerdine, 2017). At the same time, though the claims of this thesis are situational, they provide insight relevant to the critical questioning of social practices (Garrity, 2010), of how discourses can constitute a series of social practices, which can be repeated and reproduced across a range of institutional practices.

The focus on certain aspects of the organisation and institutional context could be said to be a limitation of this thesis. Notably, consideration of wider equalities legislation, such as the Equality Act 2010, could have formed and influenced more of the analysis. This speaks of how dominant policy and legislative discourses constitute how researchers and practitioners alike comprehend the social-political context, with the prevalence of the newer and policy texts which more explicitly referenced the UNCRC taking precedence in this thesis and in how the analysis was undertaken. This could be argued to be indicative of not accounting for equalities legislation or the influence of the legal frameworks around discrimination, however, the boundaries of this thesis needed to focus on the policy context which was positioned to explicitly enact the UNCRC. Moreover, the focus of EPs accounts did not include a comprehensive discussion of how equalities legislation intersected with the UNCRC.
The choice to focus on EPs, rather than children and young people, could also be conceived to be a limitation to this thesis. Crucially, the aim of this thesis was to establish the views of EPs with regard to their professional practice, thus placing EPs as the object of enquiry. This is not to suggest that the inclusion of children and young people would not offer alternative constructions of how EPs understand the UNCRC, undeniably it could. However, this research took into account the limited availability regarding professional knowledge of children’s rights, coupled with evident and longstanding gaps in children’s rights knowledge leading to a limited rights discourse in policy texts. Taking this into account indicates that current approaches to children’s rights for both policy and practice is potentially not achieving some of the changes necessary for realisation of the UNCRC, indicating the professional focused research and developed was and is required.

Implications for future research

This research was conceptualised to explore the understanding and enactment of the UNCRC in educational psychology. Concerns around the status of UNCRC knowledge both interior and exterior to the educational psychology field has underpinned and driven the direction of this thesis, in the problematizing of taken for granted knowledge (Bacchi, 2012) in the constitution children’s rights discourses and practice in educational psychology. The initial research was set to be action research with the focus of implementing a children’s rights strategy in an educational psychology service. However, critical action research is a close and in depth examination of forms of knowledge, focused on problematizing dominant knowledges (Kemmis, 2006), which ran in contradiction to the project’s fundamental objective, which was developed on certain assumptions of children’s rights knowledge with aim of creating an implementation strategy.

However, such an undertaking is still required, with the findings from this thesis suggesting that wider scale work is needed on both the meaning of children’s rights is in educational psychology, and I would argue, within LAs and the wider children and young people’s workforce. The findings from this research could form the basis for further exploration of children’s rights in both educational psychology and the wider context of the children and young people’s workforce through the development of an action research project. Crucially, this thesis has opened up a series of debates with EPs, which can be applied to other professional areas and practices.

Notably, this thesis has raised further questions as to how the UNCRC and children’s rights can be strengthened. Crucially, the accounts in this doctoral research did not elicit exploration of how specific difficulties, impairments or categorisations experienced by children and young people with SEND intersected with how children’s rights were responded to, notwithstanding some exploration of the dominance of
language based communication and capacity. This could be as a result of how I have experienced EPs in contemporary educational psychology practice to resist reliance of categories and labels. Nevertheless, the challenges children and young people with SEND face regarding the realisation of their rights, alongside professionals understanding of this, is an area for future research. Importantly, EPs have demonstrated knowledge regarding the ethical challenges in their work, and how to draw on rights discourse to reflexively critique practice issues, for instance the problematization of the use of views and voice, which could be applied to a range of practice contexts both inside and outside of educational psychology. Nevertheless, there is scope for more explicit knowledge of the UNCRC by EPs, including its status within educational psychology practice, locally and nationally, with EP accounts reflecting how UNCRC specific knowledge needs to be strengthened across the children’s workforce. Greater understanding, research and analysis could all form the foundations of future research.

Conclusion

Importantly, the findings based on accounts of EPs on their understanding and enactment of the UNCRC indicate that EPs commitments to children’s views, but going beyond normative and dominant understandings of simply establishing children’s views, to one of interrogation of practices underpinned by important debates which seek to limit children’s rights and participation.

Nevertheless, on a national level the limited government commitment gives space to negotiate what rights to prioritise or to marginalise, with children and young people with SEND remaining one of the more marginalised groups in UK society (CRAE, 2018). While the UNCRC has been on the national agenda for more than 30 years, understanding and enactment still remains on the fringes in a range of practice sectors. For instance, the discourse of ‘new rights’ in the CoP signals the need for development and embedding of children’s rights. Within educational psychology, the limited representation of children’s rights in their governance indicates the need for a ‘refocusing’ on the UNCRC and how it marries up with national legislation and professional ethics.

In the context of children’s rights, this arguably has wider implications, most notably how a robust rights framework has yet to be distributed through policy and practice, with potentially limiting effects on how practitioners, including EPs take up rights informed practice. EPs, however, have the professional capacity to take up these key debates and work towards strengthening and developing rights-informed practice in their field.
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Appendix A
Convention on the Rights of the Child

Adopted and opened for signature, ratification and accession by General Assembly Resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with Article 49

Preamble

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in Articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in Article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth”,

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) ; and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Recognizing the importance of international cooperation for improving the living conditions of children in every country, in particular in the developing countries,
Have agreed as follows:

PART I

Article 1
For the purposes of the present Convention, a child means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier.

Article 2
1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.

Article 3
1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4
States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5
States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6
1. States Parties recognize that every child has the inherent right to life.

2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7
1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.
Article 8
1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 9
1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child’s place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child’s best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10
1. In accordance with the obligation of States Parties under Article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under Article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11
1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12
1. States 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.
2. 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.

Article 13
1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child’s choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
   (a) For respect of the rights or reputations of others; or
   
   (b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 14
1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15
1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16
1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

Article 17
States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:
(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of Article 29;

(b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

(c) Encourage the production and dissemination of children’s books;

(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of Articles 13 and 18.
Article 18
1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19
1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20
1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background.

Article 21
States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child’s status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of child’s care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child’s country of origin;

(c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22
1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian
assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organisations or nongovernmental organisations cooperating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

Article 23
1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child’s active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child’s condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child’s achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24
1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
   (a) To diminish infant and child mortality;
   (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
   (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
   (d) To ensure appropriate pre-natal and post-natal health care for mothers;
   (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;
   (f) To develop preventive health care, guidance for parents and family planning education and services.
3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25
States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26
1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27
1. States Parties recognize the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child’s development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28
1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
   (a) Make primary education compulsory and available free to all;
   (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
   (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
   (d) Make educational and vocational information and guidance available and accessible to all children; (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to
scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the
needs of developing countries.

Article 29
1. States Parties agree that the education of the child shall be directed to:
(a) The development of the child’s personality, talents and mental and physical abilities to their fullest potential;
(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter
of the United Nations;
(c) The development of respect for the child’s parents, his or her own cultural identity, language and values, for the
national values of the country in which the child is living, the country from which he or she may originate, and for
civilizations different from his or her own;
(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality
of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
(e) The development of respect for the natural environment.
2. No part of the present article or Article 28 shall be construed so as to interfere with the liberty of individuals and
bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in
paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform
to such minimum standards as may be laid down by the State.

Article 30
In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to
such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group,
to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 31
1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities
appropriate to the age of the child and to participate freely in cultural life and the arts.
2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and
shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32
1. States Parties recognize the right of the child to be protected from economic exploitation and from performing
any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or
physical, mental, spiritual, moral or social development.
2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation
of the present article. To this end, and having regard to the relevant provisions of other international instruments, States
Parties shall in particular:
(a) Provide for a minimum age or minimum ages for admission to employment;
(b) Provide for appropriate regulation of the hours and conditions of employment;
(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33
States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures,
to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international
treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34
States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes,
States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:
(a) The inducement or coercion of a child to engage in any unlawful sexual activity;

(b) The exploitative use of children in prostitution or other unlawful sexual practices;

(c) The exploitative use of children in pornographic performances and materials.

Article 35
States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36
States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child’s welfare.

Article 37
States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age.

In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38
1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of 15 years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of 15 years into their armed forces. In recruiting among those persons who have attained the age of 15 years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39
States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40
States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth, which reinforces the child’s respect for the human rights and fundamental freedoms of others and which takes into account the child’s age and the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society.

To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
   (i) To be presumed innocent until proven guilty according to law;
   (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
   (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
   (iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
   (v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
   (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
   (vii) To have his or her privacy fully respected at all stages of the proceedings.

States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

**Article 41**

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

(a) The law of a State party; or

(b) International law in force for that State.

**PART II**

**Article 42**

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.
Article 43

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of ten experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights

(a) Within two years of the entry into force of the Convention for the State Party concerned;

(b) Thereafter every five years.
2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

Article 45
In order to foster the effective implementation of the Convention and to encourage international cooperation in the field covered by the Convention:
(a) The specialized agencies, the United Nations Children’s Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children’s Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children’s Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children’s Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee’s observations and suggestions, if any, on these requests or indications;

(c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;

(d) The Committee may make suggestions and general recommendations based on information received pursuant to Articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

PART III

Article 46
The present Convention shall be open for signature by all States.

Article 47
The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 48
The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 49
1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 50
1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

Article 51
1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.

Article 52
A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 53
The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 54
The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.
IN WITNESS THEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective governments, have signed the present Convention.
Appendix B

Hart’s (1992) Ladder of Participation
Appendix C

Treseder’s (1997) Degrees of Participation

- **Consulted and informed**: The project is designed and run by adults, but children are consulted. They have a full understanding of the process and their opinions are taken seriously.

- **Child-initiated, shared decisions with adults**: Children have the ideas, set up projects and come to adults for advice, discussion and support. The adults do not direct, but offer their expertise for young people to consider.

- **Assigned but informed**: Adults decide on the project and children volunteer for it. The children understand the project, they know who decided to involve them, and why. Adults respect young people’s views.

- **Child-initiated and directed**: Young people have the initial idea and decide how the project is to be carried out. Adults are available but do not take charge.

- **Adult-initiated, shared decisions with children**: Adults have the initial idea, but young people are involved in every step of the planning and implementation. Not only are their views considered, but children are also involved in taking the decisions.
Appendix D

Understanding and Enactment of the United Nations Convention on the Rights of the Child in Educational Psychology

Interview Questions:

Part One - General and Introductory Questions:

1. This research is about exploring educational psychology and psychologists understanding and enactment of the United Nations Convention on the Rights of the Child. This is an international legal document that the UK has committed to implement. There are various ways the UK government does this but what I am interested in is how this has been translated in educational psychology practice and how EPs practice this:
   a. First what is your understanding of the UNCRC and more broadly the term children’s rights?
   b. What is your experience of its use within Local Authorities, educational psychology services and individual practice?

Part Two - The UNCRC in Practice:

2. Local Authority:
   a. In what way is the UNCRC upheld in LAs (examples).
   b. What are the strategies, documents and processes that LAs use to enact children’s rights (prompt for policy and guidance if necessary).
      i. What is the relevance of these documents to EP practice?
      ii. Do these documents support EPs in upholding children’s rights?
   c. In your experience how do LAs integrate children’s rights into their organisational culture?
      i. What are the common methods or activities that LAs enact children’s rights?

3. Educational Psychology:
   a. How are children’s rights incorporated into educational psychology governance i.e. through ethical and practice guidelines? What examples are there?
   b. What examples can you think of where educational psychologists integrate children’s rights into their practice?
   c. What does children’s rights have to offer to educational psychology practice?
   d. What are the challenges in enacting children’s rights in educational psychology?
Follow up questions:

i. There are a range of perspectives on what it means to enact children’s rights. Some competing perspectives are around ideas of child protection and child participation. How do you think concepts of rights protection or participation fit/link with educational psychology practice.

ii. Could you describe any situation where these tensions are present in EP practice.

Part Three – the UNCRC in policy and legislation:

SEND Code of Practice and the UNCRC:

The UK government has committed to upholding the UNCRC through legislation and policy (i.e. Children’s and Families Act 2014 and related policy and guidance). One of these pieces of guidance is the SEND Code of Practice 2015. It has been said that the SEND Code of Practice 2015 drives the every day work of an EP. I have undertaken extensive analysis of the SEND Code of Practice to determine how policy is guiding EP practice and also to understand how children’s rights is represented within this. I am hoping to explore this is translated into practice and the possibilities for rights informed practice. Some key discourses that emerged from this are:

1. Gaining the views of children and young people and involvement in decision making is a key discourse in the SEND Code of Practice 2015. However, in the SEND Code of Practice decision making powers are transferred to ‘young people’ (aged 16 and above):
   a. What are your thoughts on this interpretation of being ‘involved’ and ‘participating’ in decision making?
   b. How does this impact on educational psychology practice and how you work with children and young people?
   c. In what ways are children and young people involved in decision making in the work an educational psychologist will do with a child or young person?
   d. Consent could be viewed as a decision making power. In your experience how do educational psychologists engage with children and young people in terms of consent?
   e. How could consent be viewed to provide children and young people with a say and real involvement in decision making?
   f. There are a range of practices related to how children and young people consent to services but often children under the age of 16 do not consent and their parents do on their behalf. In your experience how do educational psychologists manage rights issues in relation to this?
2. Person Centred Practice has been presented as a method to ensure children and young people are involved in the process of receiving support for SEND. This can be a very useful approach in developing shared decision making and ensuring everyone has a say. However, challenges in undertaking PCP have also been identified. What are your thoughts on;
   a. How children and young people are involved in planning for their SEN?
   b. Undertaking PCP. How has this changed the involvement of children and young people?
   c. Some moves within LAs to use a consultation model for implementing educational psychology services—how does this sit within PCP frameworks?
   d. To what extent do educational psychologists communicate directly with children and young people? What are methods of doing this?
   e. What effects might there be of not communicating directly with children and young people?
   f. What do you feel is the impact on ensuring children and young people are represented in planning for SEND?

3. Advocacy—educational psychologists have described themselves as advocates for children and young people.
   a. What is your understanding of the term advocacy?
   b. In what ways can EPs advocate for children and young people?
   c. What are the possibilities and barriers for advocating for children and young people in the role of the educational psychologist?
   d. What are the opportunities for children and young people to self-advocate in educational psychology? For example in requesting services, expressing their needs, obtaining information or making complaints or representations?

Miscellaneous:

- What place do you see for children’s rights in educational psychology?
- If you could form a critical question that needed answering in relation to children’s rights in EP practice what would that be?

4. Are there any other things you would like to add?
5. Do you have any questions about any part of this interview?
6. How would you like the findings communicated to you?
Understanding proximal duty-bearer engagement with the United Nations Convention on the Rights of the Child (UNCRC)

Participant Information Sheet

Who will conduct the research?
Laura Goodfellow – PhD Researcher in Education
Supervised by Professor Erica Burman and Dr Carl Emery
Manchester Institute of Education (MIE), School of Environment, Education and Development (SEED)
Ellen Wilkinson Building, University of Manchester, Oxford Road, Manchester M13 9PL

What is the purpose of the research?
You are being invited to take part in a research study about children’s rights. The rights of children across the world are set out in the United Nations Convention on the Rights of the Child (UNCRC), which is an international document detailing the rights children are entitled to.

This research aims to explore how children’s rights are enacted and implemented within Educational Psychology (EP). The research involves critical analysis of relevant legislation, policy and practice documents both related to Educational Psychology and Local Authority provision and interviews with Educational Psychologists to explore how children’s rights and policy commitments to children’s rights are understood and enacted in practice.

The research aims to address the following questions:

4. What legislative and organisational context governs the implementation of the UNCRC at local level?
5. Within local contexts, how is the UNCRC understood and enacted?
6. How can a strategy for UNCRC enactment be developed within a local context?

This research aims to explore, identify and develop children’s rights through examples of good practice, identifying challenges and building on existing work to understand how children’s rights is positioned within educational psychology. The research will draw upon discursive approaches to explore tensions
and conflicts that may exist with a hope to expand thinking about how we understand and respond to children’s rights in practice.

**Why have I been chosen?**

I am interviewing educational psychologists from a range of contexts. This is to explore how children’s rights are understood in educational psychology and the possibilities for rights informed practice.

**What would I be asked to do if I took part?**

Participants have been asked to take part in an interview. Each interview should take approximately 40 minutes.

Participants will be asked to draw upon their professional knowledge and educational psychology practice in the interview. However, participants will not be asked or expected to provide specific practice examples that risk identifying other individuals (both professionals and service users) or organisations.

**Data:**

The data from this research will include data collected from interviews with educational psychologists and analysis of a range of relevant documents (BPS ethical guidelines, national and local authority policy documents and guidance).

**What happens to the data collected?**

The data will be analysed using discourse analysis. Findings from this research will hopefully inform and expand thinking around how children’s rights can be used in EP practice.

Educational psychologists’ responses and experiences used to answer interview questions will at no point be linked to any organisation or service in the writing up and presentation of the research.

Your data will be anonymised and I will consult with you about how you would like to be identified and described. During and at the end of the interview you will be able to indicate to me data that needs to be anonymised, changed or removed. Following the interview you will be given the opportunity to review the transcripts. We can agree a timeframe for the review of transcriptions and any other feedback required following the interview.

Findings from this research will be included in the PhD thesis of Laura Goodfellow and will be disseminated through publications and conferences.

**How is confidentiality maintained?**

- Written data being stored in a locked filing cabinet/drawer.
- Audio recordings will be transferred onto a password protected laptop/computer and deleted from the recording device.
- Transcribed data will be anonymised to protect the identity of the interviewee.
- After the research is completed the data will be deleted after five years.
• Personal or identifiable information will not be included in the research.
• I will consult with you about how you would like to be identified in the research.
• During and at the end of the interview I will ask you to indicate to me the data that needs to be anonymised, changed or removed.

However;
• If there is a risk of harm to self or others this may need to be disclosed as part of a safeguarding process.

**What happens if I do not want to take part or if I change my mind?**

It is your choice whether or not to take part. If you decide to participate in this research you will be asked to sign a consent form. However, you are still free to withdraw at any time without giving a reason and without detriment to yourself.

If on reflection you decide that you have discussed an issue or provided information that you do not wish to be included in material for analysis then please indicate and together we can formulate acceptable anonymised data or omit the data.

**Will I be paid for participating in the research?**

Participants will not be paid for participation in this research.

**Will the outcomes of the research be published?**

The outcomes of this research are expected to provide examples of good practice, strengths, challenges and new ideas in respect to enacting the UNCRC and implementing Children’s Rights. Therefore the research may be published in:

• PhD thesis.
• Academic journals.
• Practitioner publications.
• Conference papers and presentations.

**Disability and Barring Service (DBS):**

The researcher Laura Goodfellow has undergone the necessary and received a satisfactory DBS check on the 15th November 2015.

**Who has reviewed the research project?**

This research project has been reviewed by academic supervisor Professor Erica Burman.

**Issues arising:**
During the course of the research the research Laura Goodfellow will be available to discuss any concerns or queries in relation to the research. Alternatively you can contact Professor Erica Burman to discuss any queries or concerns.

**What if I want to complain?**

If you wish to make a formal complaint about the conduct of the research you can contact a Research Governance and Integrity Manager, Research Office, Christie Building, University of Manchester, Oxford Road, Manchester, M13 9PL, by emailing: research.complaints@manchester.ac.uk or by telephoning 0161 275 2674 or 275 8093

**Taking part:**

If you are interested in taking part it is important that I explain clearly so you fully understand the aims of the research and what it will involve. I hope all of the information is clear and I look forward to your participation. If you have any questions please email me at laura.goodfellow-2@manchester.ac.uk.

Alternatively contact: erica.burman@manchester.ac.uk

**Appendix F**
Hi Laura,

Many thanks for sending through these documents and for taking the time to clarify your study via our phone conversation. I’ve reviewed your documents and agree that this falls into the category of research known as Interviews with Professionals. I also agree that the topics discussed as part of the interview topic guide are strictly within the professional competence of the participants and do not include sensitive/confidential topics. Your PIS and consent form were constructed in accordance with the requirements and expectations of the University at the time to ensure that the research was conducted ethically. Given that this project was reviewed before the GDPR guidelines came into effect, I agree that it fits with the definition provided at the time for Interviews with Professionals and was therefore exempt from ethical review as the only personal identifiable information being collected (as defined at the time) was a signed record of consent.

Please accept a copy of this email as confirmation of this decision and I have copied in relevant individuals from your School for their information.

Best wishes,

Genevieve Pridham
Research Governance, Ethics and Integrity Officer (Ethics) | Secretary to University of Manchester Research Ethics
Committee 2, 3 and the Proportionate Committee | Directorate of Research and Business Engagement | 2nd Floor Christie Building | University of Manchester | Oxford Road | Manchester M13 9PL
Phone: 0161-275-2674 | Email: genevieve.pridham@manchester.ac.uk | Website: Research Ethics

Please note my working hours are Monday–Friday from 7am-3pm.

The Ethical Review Manager (ERM) system can be found here:

For applicants https://submission-ethicalreview.manchester.ac.uk
For reviewers https://review-ethicalreview.manchester.ac.uk

All queries regarding Ethical Review Manager (ERM) should be submitted to research.ethics@manchester.ac.uk (along with the reference number of your project) and a member of our team will aim to respond to your query within 2 working days.

From: Laura Goodfellow <laura.goodfellow@manchester.ac.uk>
Hi Genevieve

Thank you for talking through all of this with me.

Short Summary of Research Project:
My research is aimed at understanding educational psychologist’s understanding of children’s rights. This has been through policy analysis and interviews with educational psychologists (EPs) in professional roles (recruited through contacts within UoM and other Universities). The research was deemed non-sensitive and part of an EPs professional role as upholding and having a responsibility to the United Nations Convention on the Rights of the Child (UNCRC) is a requirement to all professionals working in the children and young people’s workforce. Specifically for EPs the UNCRC is identified in key governing documentation and legislation that EPs need to adhere to and have a statutory requirement under i.e. Children and Families Act 2014, Special Educational Needs and Disability Code of Practice 2015 and British Psychological Society Guidance on EP practice. Therefore, the UNCRC and the broader idea of child rights is a regular part of everyday practice that remains underexplored in academic literature.

I have attached:
- Consent forms.
- Participant Information Sheets.
- Interview Schedule.
- My original email to Sarah Marie Hall and UREC (first email 15th March 2018; follow up email 23rd April 2018; response from Sarah 23rd April 2018).

Data collection:
My first interview was the 4th May 2018 and I continued collecting data and interviewing until the end of July 2018.

If you need further information or clarification let me know.

Thanks
Laura

Laura Goodfellow
PhD Researcher
Children’s Rights and Education
Ellen Wilkinson Room CG.41
Appendix G

Consent
My first recollection of the use of the term consent arose from an informal conversation with an EP who spoke about obtaining parental consent. This conversation was reflected upon, where I drew on my own knowledge from practice in a third sector organisation regarding how consent was directly obtained from children and young people through expressly created consent forms for children and young people ensuring there was an explicit articulation of consent regarding involvement in services. This conversation could be said to be a ‘surface of emergence’.

I saw consent as a form of participation in decision making, thus leading me to explore this signifier or code further.

Existing Researcher Knowledge
My existing knowledge from practice contributed to the formation of this code, and the selection of consent as an enactment of children’s rights. I was aware of children’s right to consent to service involvement through my own professional role and understood the concept of Gillick competence.

Policy
Consent was found to be represented in a range of policy texts, therefore, I identified another ‘surface of emergence’. This was most explicitly outlined in the CoP 2015 (DfE and DfH, 2015), which for example, specified the transfer of decision making powers from parents to young people aged 16, meaning they were able to consent to their own EHCP process. BPS Practice Guidelines (BPS, 2017) explicitly linked informed consent with the UNCRC, constructing consent as enactment of children’s rights.

Academic Literature
Previous research and analysis of the term consent had situated this within children’s rights frameworks and made explicit links to the UNCRC (Alderson, 2017; Whittington, 2019).
Engagement with the academic literature expanded my own knowledge, introducing me to debates around criminal responsibility, discourses of sexual consent, medical consent, assent and dissent. These debates informed and shaped the analysis of the discourse, particularly in exploration of subject positions and formation of concepts.

Children’s consent and the UNCRC was not found to be part of the educational psychology academic literature.

**Interview Schedule Development**

I opted to ask explicit questions about consent in the interviews with EPs. Foucault’s Archaeology is concerned with the ‘unsaid’, in making visible certain statements, which have been subject to exclusion.

**Coding Example**

*It’s [UNCRC] the root of a lot of our understanding of children’s rights in regard to the way we think about planning for their education, their contribution to decision making and their right to be informed about what’s happening to them so we have always used it as a reference point and shown how it underlies the legislation and then shown how that is enacted in SEN code of practice and then used that to demonstrate the kinds of things that people need to be having regard to it so the having the ideals and the principles and then use it as a structure to get to what we want people to do (Joseph).*

*It is really interesting in terms of that acceptance of that right to education of children that clearly is central and fits in with what we’ve been saying that so for a child’s right to have an education and to have an education that’s appropriate to them is fundamental and we also need to see that although a child has a right to an education a child might not be in that place. (Margaret)*
Interesting though an awful lot is about parent’s rights as well. There’s a lot in their about your rights and even what’s coming up with GDPR now and rights around consent and at what age does the child hold more rights than the adult that’s always an ongoing debate.

(John)

Example – Grids of Specification

I guess I think what could be built on is that I think we are quite skilled in how we consult with children and how we know the importance of building rapport, we know the importance of establishing a relation in order to get the child’s views to facilitate them to express themselves and to express themselves about what is important so they are trusting enough as you have to trust the person to share your views with them so I think we are quite good at being clear what we’re doing and why we’re involved. We very much set the context for our involvement so they’re clear who we are and why we’re there what we’re going to be doing and why we’re talking to them so the child knows where their views are going and what the purpose is of us talking to them and what we’re doing. I think we’re quite good at that. I think we could be clearer with ourselves and clearer of the people we work with about the next level of that is children’s participation in the whole process – it’s not just about getting their
Setting the agenda with others and feeding their views into that – it’s about setting the agenda with them (Eleanor).

Example – Institutional Sites EPs are speaking from the HCPC code of conduct, [and] the BPS ethical code have the rights of the child at the heart of them but talk about, I talk to my supervisees how we’ve got three bosses in educational psychology. We’ve got the Local Authority that pays our wages and expects us to be an officer of the Local Authority, the school because we run a traded service because they’re paying for our time and also we’ve got on the other side, the child and the family and our ethical duties and those tend to line up and basically, in my view, take priority over the other relationships and so yea they help us prioritise children’s rights and their needs when we’re under pressure from other people who think they can tell us what to do. (Joseph)

Example - the position of the subject:

As can be seen in the extract below, this EP is deploying discourses indicative of protective approaches to rights, such as ‘development’ and ‘needs’, thus is occupying a subject position of a protector of rights.

Yes I think looking, children’s rights is across quite a lot of aspects of their development and environment, it touches lots of things. I think ed psychs do a very good job of that. I’m not just here to focus on your learning needs and your mental health needs but I’m looking at your resilience, your learning environment, your domestic environment, what are your strengths. (Tim)
Appendix H

Reflection on analysis of the Formation of Concepts

**Descriptions of concepts:**
Voice and views were described as a description of a concept. This involved critically reviewing the academic literature in regarding these concepts and how they have been accounted for in policy texts.

**Interpretations of concepts:**
How EPs used these concepts was explored.

**Implications and effects of concepts:**
This involved consideration of how these concepts were used in practice. EPs provided accounts of how they gathered children and young people’s views and what views meant to them. The effect of how EPs were deploying views as a discourse was explored, for example, it obscuring the full meaning of Article 12.
Justifications:
One example of this is how EPs positioned views as central to their role, leading to views being positioned as a proxy for children’s rights.

Generalisation of concept:
It was of interest to me how views and voice, in particular, was mobilised indiscriminately at the expense of other aspects of participatory discourse, such as giving views due weight.

The dependence of statements on other statements:
Views and voice were inter-dependent on participation and consultation, all of which circulated within EPs’ accounts. My interest was in exploring how these overlapped and intersected.

The rhetorical schemata which combines certain statements:
EPs critiqued the use of voice and interrogated how it was deployed in educational psychology. In particularly EPs drew on ‘violence’ of voice and how it risks maintaining patriarchal practices.

Appendix I

Reflection on exploring points of diffraction

An example of a point of diffraction is consultation. This term is considered a lower form of participation under such participatory frameworks (i.e. Hart’s Ladder, 1992). However, consultative frameworks, popular in educational psychology, and used by EPs in schools offer a more developed form of partnership work and collaborative practice. In this way, consultation can be seen as incompatible with progressing participatory practices, but also a point of equivalence. For this reason, consultation was explored as both a consultative practice which had capacity to develop participatory, but also as a limiting practice where EPs identified they ‘just consult’. 
Appendix J

National Standards for the Provision of Children’s Advocacy Services

The *National Standards for the Provision of Children’s Advocacy Services* were issued as section 7 guidance in November 2002. A summary of the headings from the standards follows:

The Standards:
- **Standard 1**  Advocacy is led by the views and wishes of children and young people.
- **Standard 2**  Advocacy champions the rights and needs of children and young people.
Standard 3  
All advocacy services have clear policies to promote equalities issues and monitor services to ensure that no young person is discriminated against due to age, gender, race, culture, religion, language, disability or sexual orientation.

Standard 4  
Advocacy is well-publicised, accessible and easy to use.

Standard 5  
Advocacy gives help and advice quickly when they are requested.

Standard 6  
Advocacy works exclusively for children and young people.

Standard 7  
The advocacy service operates to a high level of confidentiality and ensures that children, young people and other agencies are aware of its confidentiality policies.

Standard 8  
Advocacy listens to the views and ideas of children and young people in order to improve the service provided.

Standard 9  
The advocacy service has an effective and easy to use complaints procedure.

Standard 10  
Advocacy is well managed and gives value for money.

Copies of the standards can be obtained from DfES Publications, PO Box 5050, Sherwood Park, Annesley, Nottingham, NG15 ODJ, tel. 0870 001 2345, by quoting reference 29606/National Standards for the Provision of Children’s Advocacy Services.

Taken from the Guidance Providing Effective Advocacy Services for Children and Young People Making a Complaint under the Children Act 1989 (Department for Education and Skills, 2004)