

Institution: Newcastle University		
Unit of Assessment: 18 Law		
Title of case study: Influencing the Adoption of a Children's Rights Approach in Law and Practice		
Period when the underpinning research was undertaken: 2013-2020		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s): Kathryn Hollingsworth	Role(s) (e.g. job title): Professor of Law	Period(s) employed by submitting HEI: September 2010-present
Period when the claimed impact occurred: 2017-2020		
Is this case study continued from a case study submitted in 2014? N		
1. Summary of the impact		
<p>There is a well-recognised disjuncture between children's 'rights on paper' and the realisation of those rights in practice. Hollingsworth's research has helped redress this problem by influencing the adoption of a children's rights approach within law and practice in multiple jurisdictions by:</p> <ul style="list-style-type: none"> • Influencing New Zealand's Ministry for Children to introduce new legislative provisions that adopt an overt children's rights approach; • Shaping and delivering judicial training, changing judicial practice in multiple jurisdictions, influencing and informing the Judicial College in England and Wales in the development of judicial guidance, and increasing judicial awareness and understanding in relation to children's rights approaches to judgment-writing and sentencing. 		
2. Underpinning research		
<p>Hollingsworth's research addresses the mismatch between international children's rights (CR) standards and the domestic realisation of those rights. Her work has two major strands: (A) Children's Rights in Youth Justice; (B) the Children's Rights Judgments Project.</p> <p>(A) Children's Rights in Youth Justice</p> <p>Hollingsworth's youth justice research has sought to understand why, despite comprehensive international rights standards, the rights of children in conflict with the law are routinely infringed. She argues that this is partly due to the tension between children's status as child and their status as offender which results in confusion and inconsistency in the legal protection of CR in youth justice. Hollingsworth's research offers a new theorisation to address the identified failings and helps to provide clarity, consistency and coherence in how judicial and legislative rights protection <i>should</i> happen: specifically (i) a relational <i>conceptualisation</i> of CR in youth justice should be adopted [PUB1]; and (ii) an alternative <i>concept</i> of autonomy that is specific to children, taking account of their unique status as rights-holder in both a temporal sense [PUB2] and towards whom both parents and the state have additional duties [PUB3]. Hollingsworth applies her theorisation to recommend new practice in concrete terms through her analysis and critique of existing law and practice [PUB1-3].</p> <p>(B) Children's Rights Judgments Project (CRJP)</p> <p>The CRJP was co-directed by Hollingsworth and Stalford (Liverpool University), funded by an AHRC Network Grant. The project employed the methodology of judgment re-writing to explore why and how judges could adopt a more robust CR approach through judgment-</p>		

writing. In doing so, it examined how international CR standards could be realised in concrete and tangible ways, and how children could be made central to legal proceedings.

The main output was *Rewriting Children's Rights Judgments: From Academic Vision to New Practice* [PUB4]. Six developmental workshops - to which judges (including Supreme Court and Court of Appeal Justices), leading practitioners, and experts from civil society contributed - ensured the authenticity and thus persuasiveness of the judgments, and allowed the co-directors to bring their legal, conceptual and theoretical framing to bear on the project. This framing was also developed in two substantive chapters written by the co-directors that (i) examined the current failings in judicial practice vis a vis CR [PUB4, chap 2] and (ii) identified five features of a CR-based judgment [PUB4, chap 3]. These features are:

1. Full utilisation of international CR principles to inform judicial decision-making;
2. Using scholarship to address theoretical tensions and conceptual challenges that thwart CR in practice (e.g. to justify the special treatment of children as rights-holders and to understand children's autonomy, shaped by Hollingsworth's theoretical research [PUB1&2]);
3. Applying and advocating child-sensitive procedures to maximise children's participation in the legal process;
4. Centralising the child's voice, interests and experiences in the judgment's narrative (informed by [PUB5]);
5. Communicating the judgment to children themselves.

During 2018-20, Hollingsworth and Stalford further developed the research through the development of a robust, theoretically comprehensive rationale for judgments written specifically for Children [PUB6]. This article argues that judgments for children fulfil four functions: the communicative, instructive, developmental, and legally transformative.

3. References to the research

The following publications are all published in prominent, peer-reviewed law journals or in peer-reviewed edited collections published by leading publishers. The foreword of PUB4 is written by Lady Hale, former President of the Supreme Court and reviewed in *Modern Law Review*, *International Journal of Children's Rights*; *Journal of Social Welfare and Family Law*. PUB6 shortlisted for Socio-Legal Studies Association Article Prize 2021.

[PUB1] Hollingsworth, K (2019) 'Children and Juvenile Justice Law: The Possibilities of a Relational Approach' in J. Dwyer (ed) *Oxford Handbook on Children's Law* (Oxford, Oxford University Press) <https://doi.org/10.1093/oxfordhb/9780190694395.001.0001>;

[PUB2] Hollingsworth, K (2013) 'Theorising Children's Rights in Youth Justice: The Significance of Autonomy and Foundational Rights' 76(6) *Modern Law Review* 1046-1069 <https://doi.org/10.1111/1468-2230.12047>;

[PUB3] Hollingsworth, K (2014) 'Assuming Responsibility for Incarcerated Children: A Rights Case for Care-Based Homes' 67(1) *Current Legal Problems* 99-134 <https://doi.org/10.1093/clp/cuu013>;

[PUB4] Stalford, H, Hollingsworth, K, Gilmore, S (2017) *Rewriting Children's Rights Judgments: From Academic Vision to New Practice* (Oxford, Hart Publishing) (see especially chapters 2 and 3 written by Hollingsworth and Stalford) <https://doi.org/10.5040/9781782259282>;

[PUB5] Hollingsworth, K (2015) 'Judging Children's Rights and the Benefits Cap: *R (SG and others) v Secretary of State for Work and Pensions*' 27(4) *Child and Family Law Quarterly* 445-466. Publication available on request;

[PUB6] Stalford, H and Hollingsworth, K (2020) "'This is a case about you and your future" Towards Judgments for Children' 83(5) *Modern Law Review* 1030-1058 <https://doi.org/10.1111/1468-2230.12536>.

Grants and Funding

AHRC Network Grant (2015-2017): Children's Rights Judgments Network, GBP35,696.99.

4. Details of the impact

Hollingsworth's youth justice and CRJP work has influenced the adoption of a better informed and more robust CR approach within law and practice by (1) Influencing New Zealand's Ministry for Children to introduce new legislative provisions that adopt an overt children's rights approach and; (2) Influencing the judicial adoption of children's rights approaches to judgment-writing and sentencing.

(1) Influencing New Zealand's Oranga Tamariki (the Ministry for Children) to introduce new legislative provisions that adopt an overt children's rights approach

Hollingsworth's research persuaded New Zealand's Oranga Tamariki to introduce a 'Statement of Rights' for children in care and custody in the *Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018*. The purpose of the Statement of Rights is to set out in child sensitive language the rights that children in the care of the state can expect. It was included in the Regulations following a presentation by Hollingsworth in Wellington New Zealand in 2017, attended by a lawyer from the Ministry. The lawyer was 'persuaded by the framework' developed in PUB6 'to recommend that Oranga Tamariki develop and include [in the Regulations] a 'Statement of Rights' for children' so that '[i]n line with Kathryn's research, I [could] ensure that a children's rights approach was promoted in law as well as in its application' [IMP1]. The Statement of Rights 'is particularly significant as it is the first time, as far as I am aware, that New Zealand legislation has been specifically written for children' [IMP1]. Furthermore, the Regulations create a legal duty to ensure that all children receive a copy of the Statement of Rights and thus 'one impact of the children's rights judgment project therefore is that the (approximately) 6300 children who are in care or custody in New Zealand each year will receive a copy of a statement of the rights to which they are entitled in language they are able to understand' [IMP1].

(2) Influencing the judicial adoption of children's rights approaches to judgment-writing and sentencing.

Judicial practice, awareness and understanding of children's rights has been influenced by Hollingsworth's research on three levels:

- (i) **Shaped and delivered judicial training** to approximately **200 judges** from England and Wales, New Zealand, Singapore, India, the Netherlands and the USA (amongst others);
- (ii) **Changed judicial practice** in family, immigration and criminal courts;
- (ii) **Influenced and informed the work of the Judicial College in the development of judicial guidance** for all Crown Court judges in England and Wales.

(i) Judicial Training: Hollingsworth's two research projects have **shaped training practices in multiple jurisdictions**. Through extensive and tailored dissemination of research findings (see below) and endorsement by senior members of the judiciary (e.g. the CRJP was the sole focus of Lady Hale's 2017 plenary lecture to 650 delegates at the Dublin World Congress on Children's Rights), the research reached a global audience of judges/judicial bodies and led to invitations from **an international judicial association** and **4 jurisdictions** to develop and/or deliver judicial training.

Training materials were developed, and training delivered, for the **International Association of Family and Youth Judges and Magistrates** at the World Congress on Justice for Children, Paris, May 2018, delivered to approximately 40 judges from jurisdictions including the USA, India, and the Netherlands [IMP2].

In the context of family law, the research was deemed 'so compelling' that it informed, and was included in, a proposal to **Canada's National Judicial Institute** for a child-rights judicial training programme (awaiting outcome) [IMP3].

Again in family law, the **Singapore Judicial College** invited Hollingsworth to deliver training to 33 family court and High Court judges in January 2018. This was described by the Singaporean Judicial Officers Training Committee as '*providing the tools to improve our*

approach, making judges *'more conscious of, and sensitive in, the way they write judgments involving children'* [IMP4].

Following the family court training and bringing together the CRJP with her youth justice research, Hollingsworth worked with Just for Kids Law (JFKL) to **develop training materials for sentencing judges (criminal courts)**. The training materials were informed by the views of justice-experienced young people (recruited through JFKL) with whom different styles of sentencing remarks were 'tested'. Hollingsworth was then invited by the **Judicial College (England and Wales)** to **deliver training to Crown Court Judges** in October 2019 and February 2020 [IMP5]. Her research was the catalyst for **new curricula topics on the delivery of sentencing remarks to children** and her research briefing ('Sentencing Remarks for Children', drawing on PUB1 and PUB6) formed the basis of **new training materials and exercises** used by the Judicial College [IMP5]. In total, 127 Crown Court judges were trained. Hollingsworth also **provided training** (October 2020) on the impact of the EU Settled Status Scheme on sentencing children (based on a policy briefing written with Stalford on EU Settled Status Scheme and children in conflict with the law, informed by PUB1, PUB2, PUB3). The research briefings have been cascaded amongst members of the English judiciary [IMP5] and uploaded onto the Judicial Learning Management System, furthering **awareness-raising** [IMP5, IMP6] and, together with the training, providing *'tools which . . . we now bring to our day to day practice'* [IMP5].

In **New Zealand**, following an endorsement by the New Zealand Principal Youth Court Judge of Hollingsworth's application of the research to sentencing [IMP7], the Judicial Education Committee of the **Institute of Judicial Studies** *'were impressed by the direction and quality of [the] work'* such that it would be *'of great benefit'* to the youth court judge programme and *'[a]s a result, we included a section in our programme on writing judgments and delivering sentencing remarks in ways compatible with children's rights'* [IMP7]. As part of this programme, **training** was delivered by Hollingsworth to 20 New Zealand Youth Court judges for their induction in August 2020. The training video and materials have been distributed more widely, *'raising [judges'] awareness of the functions of writing judgments and sentencing remarks for children'* [IMP7] and a long-standing member of the Youth Court Education committee has said *'it is something I am promoting as an important issue for the entire Youth Court Bench (as well as other jurisdictions)'* [IMP8].

(ii) Changed Judicial Practice: The inclusion of the key research findings in judicial training in England and Wales and across the globe means there is potential for continuing long-term impact on judicial practice which will consolidate the **changed judicial practice** that can already be evidenced. For example, in **immigration** in the **English courts**, the CRJP is attributed as the reason for a judgment for the child in *[Child] v The Entry Clearance Officer* [IMP9]. In **family law**, in **England**, the research *'[was] at the forefront of my mind when I wrote the judgment'* [IMP10]; in **Canada** it *'informed the way I wrote judgments until I retired'* [IMP3]; and in **Singapore** *'[the project has made me] more deliberate and intentional now'* and *'clearer, and more caring, sensitive and compassionate'* when writing judgments for children [IMP4]. In the **criminal courts**, in the **Crown Court** in **England**, one judge remarked that *'Kathryn's research has influenced the approach to all of my judgments but particularly my sentencing remarks; and all other instances in which I am addressing a child in the court setting . . . I began to consistently consider and revise my judgments'* [IMP11] and another said *'I adjusted my approach to sentencing'* and the research briefing provides a *'useful aid and checklist against which to measure any draft sentencing remarks'* [IMP11]. In **New Zealand**, a Senior District Court judge was *'inspired and challenged'* *'to put the principles of [Kathryn's] research into practice'* for the first time in a complex, very serious, criminal case [IMP8]. Judges also report a positive effect on the child hearing the CR-informed judgment [IMP11] and on the content of the sentence itself [IMP11]. One judge reports that *'[Kathryn's] work has changed and continues to revolutionise the way that we as judges deal with children in our courts'* [IMP11].

(iii) Judicial Sentencing Guidance: Hollingsworth's research **led the Judicial College in England and Wales to identify the need to amend the Crown Court Compendium in**

order to include specific guidance on the delivery of sentencing remarks to children [IMP6]. The Compendium is the definitive 'go-to' guidance for all Crown Court judges in England and Wales and includes 'example' sentencing remarks which are used extensively in day-to-day sentencing practice. The Introduction to Part II of the Compendium (Sentencing) (December 2020 edition) now instructs judges to pay particular attention to how they deliver sentencing remarks to children and refers judges to Hollingsworth's materials on the Judicial Learning Management System [IMP6]. In addition, in Autumn 2020 Hollingsworth worked with the Judicial College to **develop new child-specific examples of sentencing remarks and an appendix based on Hollingsworth's research** which details why and how judges should deliver clear and empathetic sentences to children, for inclusion as **new guidance** in the 2021 edition of the Crown Court Compendium [IMP6].

The influence of Hollingsworth's research on law and practice was founded upon a strategy designed to increase **judicial awareness and understanding** of how to implement CR in practice. This was achieved through extensive national and international dissemination comprising of **presentations; meetings** with senior judges (e.g. Presiding Judge of the Family Courts of Singapore, January 2018; Principal Family Court Judge and Children's Commissioner of New Zealand, December 2017); and **practitioner publications** (e.g. *Magistrate*, April 2019, reaching 15,000 magistrates in England and Wales; *Chronicle*, January and October 2017, reaching approximately 1,000 judges from 35 jurisdictions; and *Court in the Act*, December 2017, reaching all 65 youth court judges in New Zealand); thus **informing and influencing hundreds of judges in multiple jurisdictions** [IMP5, IMP8, IMP10]. The research has thus provided '*a resource that powerfully shows how children stand to be disadvantaged by adult-facing litigation and provides an arsenal of ideas on what might be done about that. It is a real prompt to some fresh thinking*' (Justice of the Court of Appeal, England; [IMP12]). Such **awareness-raising** provides the necessary foundation for **new training opportunities** such as those being pursued for family court judges with the Judicial College by a Court of Appeal Justice [IMP12], increasing the potential impact of Hollingsworth's research **on judicial practice** in years to come.

5. Sources to corroborate the impact

[IMP1] Testimonial from lawyer at Oranga Tamariki/Ministry for Children, the legal provisions, and child friendly statement of rights (1.a: Testimonial dated 27 April 2020; 1.b: National Care Standards and Related Matters Regulations 2018, regulation 66 and Schedule 2; 1.c: Statement of Rights).

[IMP2] Testimonial from International Association of Family and Youth Judges and Magistrates, programme and materials (2.a: Testimonial dated 25 October 2020; 2.b: programme; 2.c: materials from workshop).

[IMP3] Testimonial from Canadian Judges (29 September 2020).

[IMP4] Testimonial from Family Justice Courts, Singapore (22 September 2020).

[IMP5] Testimonial from Resident Judge and Course Director, Judicial College (25 September 2020)

[IMP6] Crown Court compendium (December 2020) and testimonial from the Editor (December 2020) (6.a: Testimonial from the Editor; 6.b: Crown Court compendium)

[IMP7] Testimonial from New Zealand Judicial Studies Institute (11 November 2020).

[IMP8] Testimonial from Senior District Court Judge in New Zealand and judgment in *New Zealand Police v [AN]* NZYC 609 (8.a: Testimonial dated 15 December 2020; 8.b: judgment).

[IMP9] *[Child] v The Entry Clearance Officer* (unreported, 9 January 2017).

[IMP10] Emails and judgment of Family Court Recorder in *A Local Authority and M and F and Robin Simmers and Adrién* [2020] EWFC B52 (10.a: emails; 10.b: judgment)

[IMP11] Testimonials from Crown Court Judges (11.a: Testimonial dated 3 November 2020; 11.b: Testimonial dated 25 September 2020).

[IMP12] Emails from Justice of the Court of Appeal (12.a: email dated 29 August 2017 12:19 PM; 12.b: email dated 9 October 2020).