

Motherhood on trial: women, psychology, and the family courts

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## **ABSTRACT**

Psychology is frequently enlisted to aid judges in making decisions about the care of children in family court proceedings. This is particularly apparent with the use of psychological assessments of parents. There are also appeals to psychology from non-psychology professionals such as the use of attachment theory by social workers (Forslund et al., 2022). Whilst this might represent a desire to make evidence-based decisions, there is the potential for psychology to reinforce and reproduce inequalities, particularly regarding mothers who are more likely to be the subject of these assessments.

In this thesis I examined the role of psychology in the assessment of mothers in public law family court care proceedings from a feminist perspective. I did this by analysing anonymised published judgments from the family courts of England and Wales using discourse analysis (DA) largely drawing on Foucauldian discourse analysis (FDA). After a process of exclusion, I looked at five judgments in depth, all of which related to babies or very young children where the Local Authority was arguing for the child to be removed.

In line with a mainstream psychology worldview, mothers' personalities and mental health were referred to as a cause for concern, but often with little reference to the actual real-world implications of this on their child. The function of assigning mothers' unstable personality traits, lack of insight, or mental health problems, appeared to be to cement their positions as irrational and unfit parents as opposed to the rational professionals, and rational (if risky) fathers. The use of psychologists as expert witnesses came in the judgments, where it was clear that their statements were regarded with high importance, despite the use of questionable practice such as blaming a mother's victimhood of domestic abuse on her so called 'compulsive personality traits'.

This raises important questions about the role of psychology in causing and furthering harm and injustice. It also raises the question of whether and how psychology could and should contribute to family court proceedings.

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## **INTRODUCTION**

### **Background**

Before training as a clinical psychologist, I worked as a social worker in a child protection team for a Local Authority. I was involved in a substantial number of court proceedings, including for two new-born babies who were removed from their mothers; on one occasion I was the one doing the physical removing. I struggled ethically with being involved in these processes, which is a large part of why I left. Although it was often the only option for the child, I couldn't not see the side of the parents particularly mothers, mothers who had been sexually abused as children, who were victims of domestic abuse and exploitation. It was always the mothers that got the blame; the fathers rarely put themselves forward for the care of the child, and even if they had, they would have immediately been deemed too 'risky'. As part of one of the sets of court proceedings, there was a psychological assessment of the mother, which I cited in my social work statement. The psychological assessment had reported the mother's scores on a personality test, which I then cited. Looking back, I feel ashamed of this, and can see how I was colluding with the discourse of (questionable) expertise to build a particular picture of a mother. In this case I was not actually arguing for the child to be removed, but nonetheless I still feel a pang of shame when I think about it. Now joining the psychological profession and with this background, I am acutely aware of how psychology is not just an innocent helping profession as we might like to think it is. I therefore feel a responsibility given what I saw as a social worker and given the profession of psychology that I am joining, to try to shine a light on how mothers in family court proceedings get positioned, and the role that psychology plays in this.

### **Family Courts**

A child being legally removed from the care of their parents represents one of the most draconian and interventionist actions that a state can undertake. Legal decisions about a child's care are made in England and Wales in the Family courts. The family courts make rulings on a range of matters including divorce and domestic abuse. For the purposes of this study, the focus is on public law matters relating to

children and governed by the Children Act (1989), particularly in relation to care proceedings which fall under Section 31 of the Act.

According to the Children Act, the family courts of England and Wales can make orders which place a child under the care or supervision of the local authority, thus removing or limiting the rights of the child's parents over their care and overriding the Human Rights Act (1998) article eight right to a family life. This should be done when a child is at risk of significant harm and as the last resort.

Between 1 April 2023 and 31 March 2024, the child and adolescent family court advisory service received 11,436 section 31 care applications involving 18,891 children (Cafcass, 2024). New-born babies are far more likely to be subject to care proceedings than any other age group, with infants under one constituting 27% of all children in care proceedings between 2007/08 and 2016/17 (Broadhurst et al., 2018)

High profile cases such as the deaths of Peter Connolly in 2007 and more recently Arthur Labinjo-Hughes and Star Hobson, have led to questions as to why judges made decisions not to remove. As well as the public outcry about the tragic fates of children who were not removed from their families and then died or were seriously harmed, there is also a national crisis in the increasing number of children being taken into the care system, which is struggling to cope.

As of 31 March 2023, 83,840 children were looked after by the state as compared with 67,050 on the same date in 2012 (Department for Education, 2023). The rise in the number of children being taken into care is attributed to a range of factors including the impact of austerity on families and services, as well as a more risk averse child protection environment (Bywaters et al., 2018).

According to an independent review of children's social care commissioned by the UK government, published in 2022:

*“Without a dramatic whole system reset, outcomes for children and families will remain stubbornly poor and by this time next decade there will be approaching*

*100,000 children in care (up from 80,000 today) and a flawed system will cost over £15 billion per year (up from £10 billion now).” (MacAlister, 2022: p.8)*

## **Social Inequalities and The Family Courts**

The link between the number of children being taken in to care and wider social policy, namely austerity, cannot be ignored. Prior to 2010, the number of children being taken into care was relatively stable year on year at around 60,000 between 2000-2009 (Department for Education, 2021). Since 2010 the numbers have been increasing and it is now roughly 80,000. Whilst some of the increase since then may have resulted from risk aversion following reactions to high profile cases, there is also an established link between austerity and both the child protection system and families’ abilities to cope. Bywaters et al.’s (2018) analysis of Children’s Services spending by local authorities (LAs) between 2010 and 2015 showed that there was a total reduction in expenditure of 14% in this time, with the most deprived LAs being cut by 21% compared with the least deprived at 7%. Most cuts were made to early help and early years services. Thus, the services that existed to support families and prevent situations from escalating have been decimated, and the outcome can be seen in the increase in later intervention in the form of removal and child protection plans (Action for Children et al., 2020).

A report by the Joseph Rowntree Foundation, which examined international as well as national data, showed that there is a definite link between poverty, inequality and harm to children (Bywaters et al., 2016). This is not to say that children living outside of poverty do not experience child abuse or neglect, nor that all children in poverty experience it, but there is a clear link. The mechanisms for this link are complex but may relate to both the material impact of poverty on parents’ abilities, as well as the indirect impact on family stress and neighbourhood conditions. The report outlines the interlocking factors that interact with these direct and indirect impacts, such as the role of substance misuse and domestic abuse. A 2022 follow up report confirmed these findings and commented on the way that the child protection system focuses on individual behaviours rather than addressing the causes of child abuse (Bywaters & Skinner, 2022).



The above facts and figures point to why children in certain groups in society may experience higher rates of abuse and neglect and therefore contact with the child protection system. However, the picture is not that simple. It implies that higher rates of child protection intervention in certain groups reflect higher rates of abuse and neglect, when it is more likely that they reflect a combination of a) actual rates of abuse and neglect and b) the child protection's system's resources and biases.

Bywaters et al.(2015) refer to these two factors as the 'demand' and 'supply' aspects of child protection intervention. Differences in Children's Services intervention by geographical area are a good exemplifier of how the supply side comes into decisions about child protection. Bywaters et al. (2015) uncovered a phenomenon that has been called the 'inverse intervention law' whereby a child in a more deprived local authority is less likely to be subject to Children's Services intervention than a child living in the same level of deprivation in an overall wealthier area. This may relate both to the larger availability of resource in the wealthier local authorities, as well as to practitioner attitudes for example in wealthier areas, practitioners may have more judgment of what normal or good enough parenting is based on middle class norms (Bradt et al., 2015).

### **Parents In Family Court Proceedings**

Routine demographic data about parents who are involved in court proceedings is not collected. However, data linkage studies have shown that parents involved in the family justice system face multiple disadvantages and have higher rates of physical and mental health problems than the general population. As part of the Child Welfare Inequalities project, Johnson et al. (2022) examined health records of all parents in Wales who were involved in care proceedings between 2011 and 2019 and found that they lived in the most deprived quintile, had higher levels of healthcare use, and had significantly higher levels of mental and physical health problems than the comparison group.

Parents involved in the family justice system are more likely to experience poor physical and mental health than the general population (Johnson et al., 2022;

Pearson et al., 2021). They are also more likely to have been in care themselves, and to have experienced multiple adversity including abuse and neglect in their childhoods (Broadhurst et al., 2017).

In terms of the ethnicity of families in court proceedings, the picture is quite complex. Most research in the area relates to social care involvement and the care system rather than court proceedings: Research has shown that White children have higher rates of social care intervention than almost any other ethnic group (Bywaters & The Child Welfare Inequalities Project Team, 2020). However, children from Black and some Mixed or multiple ethnic groups, as well as minority White groups such as Gypsy traveller and Irish are overrepresented in the care system (Owen & Statham, 2009; Department for Education, 2022).

With regards to Family court care proceedings, a recent report into the ethnicity of children in court proceedings has been published by the Nuffield Family Justice Observatory (Edney et al., 2023). Some of the key findings are summarised below:

*“Black and Asian children are less likely to be on an adoption/placement order than children who are from White and Mixed or multiple ethnic groups...*

*Black and Asian children, on average, receive legal orders that we class as ‘less interventionist’ than their White counterparts...*

*A higher proportion of Black and Asian children have a secure accommodation or DoL (deprivation of liberty) order than White and Mixed or multiple ethnicity children*  
*Black and Asian children are, on average, older upon entering care proceedings for the first time.” (p.2)*

The reasons for these differences are not known, and indeed Bywaters et al. (2019) comment that there are differences in opinion as to whether higher rates of intervention are ‘better’ or ‘worse’; for example, it could be that less intervention means families from racialised communities are not getting as much support.

## Mothers In Family Court Proceedings

As well as most parents in the family justice system facing multiple material disadvantages, it is mainly women<sup>1</sup> who are the primary caregiver and therefore subject to proceedings. In the UK, mothers are much more likely to be the primary caregiver and to be single parents than fathers (Office for National Statistics, 2022). Research in Canada has shown that 90% of primary caregivers in child protection proceedings are women and the proportions are likely to be similar in England and Wales, though data is not recorded (Fallon et al., 2020). Research into recurrent care proceedings has shown that one in four mothers whose child is removed from them are likely to have further sets of care proceedings with future children, as opposed to one in eight fathers (Ryan, 2021).

Mothers who are involved in family court proceedings are likely to have experienced abuse and neglect themselves, both in childhood and as adults. Broadhurst et al. (2017) carried out a comprehensive study into the characteristics of mothers involved in recurrent care proceedings. They found that amongst this population there were high levels of mothers having been victims of domestic abuse (65%) engaged in substance misuse (55%) and with mental health issues (50.6%). The study also looked at the childhood experiences of these mothers and found that they had experienced much higher levels of harm and adversity as children than the general population with extremely high levels of neglect (66%), emotional abuse (67%), physical abuse (52%) and sexual abuse (53%). This was most often perpetrated by a parent or caregiver. Roughly 40% had been looked after by the state as children.

Mothers involved in care proceedings are likely to have a diagnosis of a mental health problem. Whilst routine data is not collected about mental health diagnoses of mothers involved in court proceedings, several studies have managed to link mental

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<sup>1</sup> I will be referring to women, mothers and motherhood throughout this literature review. Whilst recognising the limitations of such labels, particularly in the current context of the 'gender wars' (Mackay, 2021)23/08/2024 10:09:00, womanhood and motherhood- socially constructed as they may be- are key sites of material oppression. Further, gender-based violence, including violence against non-gender confirming individuals, is a reality which will be touched upon in this thesis. This will be expanded upon in the epistemology section where I will outline different feminist stances.

health and family court data. Pearson et al. (2021) found that two thirds of women whose children were subject to care proceedings in two London boroughs had accessed mental health services, 91% of these were secondary or tertiary mental health services (implying greater severity of problems). Griffiths et al (2021) also used population level linked data for Wales and found that over half of mothers (56%) involved in recurrent new-born care proceedings reported an existing mental health issue at their antenatal appointment, and three quarters (77%) had previous mental health problems. These levels were significantly higher than the age-deprivation matched comparison groups. It should be noted that there are limitations in the linking of data as a research method (Bohensky et al., 2010). However, given the lack of data in this area, it is currently one of the only ways to get a picture of the characteristics of parents in court proceedings.

Separating out mental health problems from other forms of trauma and adverse life experiences may be a somewhat false dichotomy. Indeed, in an article about the 'toxic trio' (substance misuse, domestic abuse, mental health problems) clinical psychologist Webb (2021) argues that separating these issues creates a disintegrated understanding of a person; often there is underlying trauma that may explain a parent's vulnerability to all three. As stated earlier, the amount of adverse childhood experiences (ACEs) that mothers in care proceedings have faced, as well as the multiple disadvantages, may do more to explain her presentation than a medical diagnosis (Felitti et al., 1998). Having said this, having a diagnosis is materially significant as it may make it more likely that a mother is subject to a psychological assessment in court. Diagnoses are also often required for access to treatment.

### **Current Issues in Family Courts**

The Family courts have become a growing area of public interest due to their historic lack of transparency and questions about the quality of expert witnesses, particularly psychologists (Summers & Campbell, 2022).

Much of this has centred around parental alienation which will be discussed in detail later, and its use against women when they have been victims of domestic abuse.

There is an ongoing campaign to change the ‘presumption of contact’ whereby the courts assume that a child should have contact with a parent (usually father) who has perpetrated domestic abuse. This largely applies to private law proceedings but has relevance to public law.

In the public law sphere, family rights organisations have been arguing that the parents who are subject to these proceedings are not given a voice and are vilified by society. Angela Frazer Wicks, chair of the Family Rights Group and a mother who was the victim of domestic abuse and whose children were removed from her care is quoted in an article as saying:

*“It feels like the odds can be stacked against families... I know from my own experience the sheer frustration at a lack of transparency or accountability for the things being done to me and not having anyone I could speak to. I felt like I had no voice”.* (Summers, 2023: para 17)

A recent briefing paper which looked at parents’ experiences of public law proceedings, found that parents often felt unheard and like bystanders in the court process (Hunter et al., 2024). As the introduction states:

*“The primacy of the welfare of the child in family justice has arguably relegated interest in parents’ experiences of public law proceedings”* (Hunter et al., 2024: p.5).

Based on interviews with 21 parents the report outlined parents’ experiences, before, during and after proceedings and the factors that contributed to them feeling supported or (more often) unsupported. One key theme was that the judge’s comments had a significant impact, both positive and negative. Another theme was around parents feeling that their life history, many of them being in care as children, was used against them. There was also discussion of feeling alienated by the terminology in court. In one striking example, a mother who turned her life around after having a child removed from her care under a Special Guardianship Order, was offered to return to court to regain care but chose not to due to the trauma of the proceedings.

## **Transparency Pilot**

To address some of the concerns around family court proceedings, the family courts have modified guidance to make it easier for the press to cover proceedings whilst still retaining families' anonymity. This is known as the 'transparency pilot' and was ushered in by president of the Family division Sir Andrew Macfarlane who wrote:

*“My overall conclusion is that the time has come for accredited media representatives and legal bloggers to be able, not only to attend and observe family court hearings, but also to report publicly on what they see and hear.. The aim is to enhance public confidence significantly, whilst at the same time firmly protecting continued confidentiality.”* (MacFarlane, 2021: p9)

The pilot launched in 2023 in three sites and has been rolled out to cover almost half of Family courts across the country in what is a significant step in the history of the Family courts and a new legal precedent.

## **Psychology In Family Courts**

As mentioned above, some of the controversy around the Family courts relates to the use of psychological expertise. Some judgments have been overturned due to questions about the quality of and undue weight given to psychologists' assessments (Summers & Campbell, 2022; Summers, 2023). A lot of this has revolved around the use of the concept of 'parental alienation' which will be further outlined in a later section. Briefly, it relates to the behaviour of a child not wanting to see or rejecting the non-resident parent (often the father), and the psychological manipulation by the resident parent to do this. This is most commonly seen in disputes between parents (private law) as opposed to public law care proceedings where it is the Local Authority versus the family.

Psychological assessments of parents are carried out to inform the court's understanding of a parent's vulnerability and parenting capacity. Most assessments

include an overview of a parent's mental health, sometimes a diagnosis, and recommendations.

Whilst there is no routine data recorded around the frequency of the use of psychology expert witness assessments in the family courts, a review of case files by the Ministry of Justice in 2011 showed that experts (not just psychologists) were used in around 92% of care cases and an average of 3.9 reports per case were ordered (Cassidy & Davey, 2011). The Family Justice Review of the same year called for the use of experts to be reduced due to delays for children, and because they were being used too frequently without need (Family Justice Review Panel, 2011). However, there is no data to show what effect this has had. A 2020 review showed that there was a shortage of expert medical witnesses in family court proceedings with the biggest shortages being in psychology and psychiatry (Working Group on Medical Experts in the Family Courts, 2020).

### **Critique Of Psychology in Family Courts**

The critique of psychological assessments in the family courts is multifaceted and includes the varying quality of reports (Ireland, 2012), the lack of regulation of experts (Association of Clinical Psychologists, 2021), and the lack of appropriate services to carry out the recommendations suggested (Pause, 2022).

The quality of psychological expert witness testimony in the family courts has come under major scrutiny of late due to some high-profile cases where judgements have been called in to question due to the perceived overreliance on unqualified expert witness statements particularly regarding parental alienation (Summers & Campbell, 2022).

A 2012 study by Ireland et al. commissioned by the Family Justice Council found that one fifth of expert witnesses of those assessed were not qualified in the field. Psychology expert witnesses are not required to have registration with the Health and Care Professions Council (HCPC) or British Psychological Society (BPS) and the 'psychologist' title is currently not a protected title. This is something that both the BPS and Association of Clinical Psychologists (ACP) have called for changes to;

however, the delays and the already limited pool of experts means that further regulation is unlikely. In response to the growing controversy around expert witnesses, the Family Justice Council and BPS have produced new guidance for the use of psychology expert witnesses in the Family courts (British Psychological Society & Family Justice Council, 2023) .

Writing about the problems with psychological assessments of children in family court proceedings, though arguably very applicable to parents too, clinical psychologist Bogaardt (2022) outlines the many and varied systemic issues at play particularly an underfunded public law system which does not attract high quality experts to the detriment of children and families.

A report by the charity Pause, which works with mothers who have had multiple children removed, looked at the experiences of mothers who had had psychological assessments undertaken for court proceedings (Pause, 2022). The report collated views and experiences from its national network of professionals and mothers enrolled in the programme. There was wide variance in the use of expert assessments in different geographical areas. Most mothers who were sampled (75%, 15 out of 20) had negative experiences of psychological and psychiatric assessments for Family court proceedings. Many did not understand the process and weren't sure how to access the services recommended. The report identifies that many of the recommendations made in expert assessments are not integrated with local service provision, and often women cannot access the recommended therapy, thus potentially jeopardizing their chances of their child remaining with them. In other words, they are being 'set up to fail' as the report is entitled.

### **Good practice**

It should be noted that not all psychology and psychological expertise is met with critique. The Pause report highlights some evidence of good practice, including the Family Drug and Alcohol Court (FDAC) where parents receive both assessment and intervention, and various other local examples.



In a judgment from 2021 the judge described the psychologist's report including an assessment of the parents as a "*landmark report, the analysis of which requires wider dissemination*" ([2021] EWHC 2844 (Fam): para. 9). In the assessment, the psychologist stated that neither parent had a diagnosable mental health problem or personality disorder, which was the question asked. The report draws on systems-psychodynamic ideas to point out why the parents' responses were understandable in the context of the stress they were facing, and why the professionals' response to the parents may also be understood in terms of unconscious systemic and organisational processes (Obholzer & Roberts, 2019). The solutions the psychologist proposes are at the level of the system rather than the individual parents. The judge points to the report of the psychologist as enabling the case to fundamentally change and for the parents and professionals to be able to work together in a wholly different way. In a follow up article written by the same psychologist and a judge, they point to the workings of the unconscious as a helpful way to understand the dynamics at play in family court proceedings whereby "*professionals blame parents because they are protecting themselves from the human misery to which they are exposed day in and day out*" (Dancey & Hellin, 2022). Much of parents' responses, they argue, are normal and understandable in the context of the stress of the court system but are pathologized by professionals due to various psychological processes including projection and fear. Thus, although the critique of psychology in the family courts is substantial, pockets of good practice are evident, and this particular example shows a very different approach to the use of psychology in the family courts.

### **Psychology Beyond Psychologists**

Most of the critique of the use of psychology in family court proceedings has stayed at the level of psychological assessments.

In an exception to this, there has been ongoing concern from a large group of child development and attachment researchers from around the world about how attachment theory is being misused in family court proceedings by a range of professionals in court, with potentially serious consequences.

In a consensus statement entitled 'Attachment goes to court: child protection and custody issues' over 50 researchers expressed their concerns about an array of misunderstandings (Forslund et al. 2022). They recognise that the 'best interest of the child' standard has meant that psychological theory and particularly attachment theory has entered the court arena with vigour, but not always to positive effect. Their concerns include using the term 'attachment' as a stand in for 'attachment quality', equating a child's attachment security with a caregiver's sensitivity, and the predictive value of attachment security. The focus of the statement is on social work guidance and documentation as opposed to empirical analysis of court process. The authors give the example of how secure attachment is overemphasised in social work guidelines and seen as predictive of a child's outcomes, when really it is nigh on impossible to apply population level research to individual cases. They write:

*"Such characterisations can prompt or sustain misguided perceptions that secure attachment is necessary for favourable child development. In turn, this can contribute to an overemphasis on secure attachment in family court decision-making"* (Forslund et al, 2022: p.17).

They critically cite a Department for Health document where it is stated that early attachments are very important and if they are "absent" or "broken", new attachment figures should be found. They state that this would be

*"a grave misunderstanding of attachment theory and research, while implying that almost half of all children should be taken from their parents – as this is the average rate of insecure attachment in the general population"* (Forslund et al, 2022: p.17).

One of the proposed solutions is to focus on caregivers' actual behaviours as opposed to trying to classify attachment styles.

Whilst Forslund et al.'s statement does highlight some of the broader issues around the use of psychology, and points to the prevalence of psychological discourse in Family courts, it is specific to attachment theory. It also sees the problem at the level of 'misuse' as opposed to questioning the premise of using psychology or the

problematics within psychological theory and research. For example, Burman (2016), has pointed to the gendered and classed origins of much developmental psychology, including attachment theory, and the way that it can be used to maintain gendered and classed power relations through putting the onus on the mother.

As Burman writes:

*“the definition and regulation of what constitutes good, sensitive mothering structured, and continues to structure, both discourses of child development and, through these, discourses of childcare provision and femininity. Maternal presence therefore functions as the essential feature in the maintenance of the social-political order”* (2016: p.146)

Whilst Forslund et al. (2022) nod to some of these issues, they regard them as problems of interpretation as opposed to examining any gendered or classed discourses baked into attachment theory itself.

## **Questioning Psychology**

The idea of questioning the truth claims of psychology and thus the very premise of using psychology in the family courts, lends itself to the disciplines of critical psychology and psychosocial studies, which both emerged largely out of post-structuralist and feminist thinking, and have their origins often in sociology or psychoanalysis rather than mainstream psychology (Frosh, 2003; Parker, 2015)

As psychoanalyst and professor of psychosocial studies Stephen Frosh (2003) writes:

*“Enough Foucauldian-inspired scholarship has now flowed under the bridge of academic and clinical psychology... for it to be well established that psychology emerges out of a set of perceptions of individuality and ‘selfhood’ which in turn are connected with the hegemony of particular constructions of social reality -for example, the belief that there is such a thing as a bounded human subject, the biology and psychology of which (or whom) are closely entwined, and which can be studied as a coherent object of knowledge.”* (p.1)

The reference to Foucault, the French philosopher and psychologist, alludes to the way that his work has influenced the 'turn to language' in the social sciences where for example psychological concepts such as intelligence are looked at as discourses used to reinforce power relations as opposed to so called scientific truths (Rose, 1985a). In *Madness and Civilization* (1965), Foucault wrote about how madness as a medical category became a way to categorise parts of the population and in so doing informed wider ideas about rationality and autonomy. In his analysis of the criminal justice system, *Discipline and Punish*, Foucault (1995) examined, amongst other things, how legal systems adopted the use of psychiatric diagnosis with the advent of reasonable insanity, and that this led to a change in how judgments were made:

*"It is no longer simply: 'Who committed it [the crime]' But 'How can we assign the causal process that produced it? Where did it originate in the author himself. Instinct, unconscious, environment, heredity'"* (1995: p.19)

In so doing, Foucault argued, law itself then reproduced norms of what it is to be a reasonable, rational individual, spawned by the inclusion of psychiatric diagnosis. Foucault argued that rather than separate science and law as two mechanisms, they should be seen as coming *"from a single process of 'epistemological-juridical' formation; in short, make the technology of power the very principle both of the humanization of the penal system and of the knowledge of man."* (1995: p.23).

The use of the word 'man' is notable. As the socio-legal scholar Smart (1992) has argued, law is gendered and it also produces gender. Drawing on post-structural ideas of language as constitutive of reality, Smart shows how motherhood has been codified through laws that shame and punish the unmarried mother. Furthermore, the case of the 'bad mother' is one which is recreated through legal discourse and supported by psychology. This is another line of criticism against the supposed neutrality of science and the law. On a more fundamental level, the construction of 'facts' per se including scientific and legal facts is something which has been interrogated by discursive psychology through post-structuralist enquiry (e.g. Potter, 1996).

The link between science and law points to a key premise of the power/knowledge couplet as coined by Foucault to show how knowledge, particularly so-called scientific knowledge such as that espoused by the psychological sciences, is inherently linked to the reproduction of power relations (Parker 1990; Rose, 1985a). The knowledges of those with particular titles and positions which are seen as powerful or important such as psychiatrist and psychologist get privileged above other knowledges. This is the premise of the concept of epistemic injustice, coined by Fricker (2010) to describe how the testimonies of those with less power or perceived knowledge are silenced and invalidated. In the case of psychology in the family courts, Boogardt (2022) draws on the notion of epistemic injustice to show how diagnoses such as 'Emerging Personality Disorder' and 'Oppositional Defiance Disorder' are used by psychologists with children in Family court proceedings. They carry weight because of their scientific veneer, and use by 'experts', however, Boogardt argues they may at best be describing "*the difficulties these children may have in sitting in a room with a professional, tolerating discussions about their histories or complex behaviours they may have acquired*" (2022: p.4)

Critical psychology as a discipline emerged, as stated by Frosh, largely from a Foucauldian inspired worldview. The sociologist Rose for example carried out a critical history of psychology and the psychological sciences, which he refers to as 'psy' (Rose, 1985a). Rose also refers to the '*regime of the self*' (Rose, 1998: p.1) which has come to prevail in public discourse, whereby the self and the concurrent terms such as autonomy, identity, individuality, freedom, are seemingly all pervasive and are promulgated by psy. Rose argues that psy plays a key role in the government of the self, and also plays a key role in the government of people, drawing again on Foucault. The intrinsic role of psy in the eugenics movement is noted as an example of the latter (Rose, 1985a). Rose refers to 'psychologization' as a process whereby a vast array of public sites became psychologized so that:

*"the social reality of psychology is not as a kind of disembodied yet coherent 'paradigm', but as a complex and heterogenous network of agents, sites, practices and techniques for the production, dissemination, legitimation, and utilization of psychological truths"* (Rose, 1998: p.60)

In this way, as Rose writes “*psychology is significant less for what it is than what it does*” (1998: p.65). This very much accords with looking at the use of psychology in such a setting as the family courts.

## **Psychology and Gender**

A significant player in the sphere of critical psychology has been the feminist movement. Critical feminist Mattos (2015) has examined the history of psychology to show how the fundamental concepts on which psychology as a science are based, notably rationality and autonomy, as referred to by Foucault, relate to the hegemonic male ideal. The history (and current state) of psychology and the treatment of women show clearly how diagnoses such as hysteria and more recently borderline or emotionally unstable personality disorder are used to medicalise experiences of women in patriarchal societies, for example most people with this diagnosis are women and have experienced sexual abuse (Shaw & Proctor, 2005; Ussher, 2011, 2013). The ‘symptoms’ are distinctly ‘female’ in their reference to emotional lability, relational dependence and self-destructiveness (Tseris, 2013).

Social worker Tseris (2019) has examined the effect of moving towards the language of ‘trauma’ which has been used as an alternative way to think about personality disorder. In a nuanced examination, Tseris outlines how much of the women’s trauma literature came from a feminist social transformative standpoint, to recognise the experience of women who had suffered sexual violence. Whilst this may remain to some extent, trauma has also taken on a more medicalised ‘brain-science’ guise- which has arguably meant it has lost some of its original intention and repeats some of the biomedical language around trauma symptoms which place the problem again within the person as opposed to what has happened to them.

It is important to note that Tseris here points towards both the transformative and pernicious uses of the same psychological concept, which is something that some of the critical psychology academics and anti-psychiatrists appear not to, reducing all psychiatric and psychological practice to oppressive. A more useful and potentially generative approach in my view is proposed by feminist scholars who argue that the

potential usefulness of science and the material world in ending gendered oppression should be considered, as well as its limitations and potential reinforcement of oppression (Alaimo & Hekman, 2008). This will be explored further in the methodology section.

## **Psychology and Motherhood**

Motherhood is a key institution where the connections between psychology and gendered power relations take hold. Motherhood as an institution of patriarchy which subjugates women is an idea that has gained traction since second wave feminism. In her feminist treatise, *Of Woman Born*, poet Rich (1986) wrote that motherhood had two definitions; one was the biological birthing of a child, and the other much more pernicious was the societal expectations and practices which uphold the institution of motherhood.

The 'good mother' or the 'good enough mother', a heavily employed phrase coined by child psychoanalyst Winnicott (1960) is normed on a heterosexual white middle class one. This is something that has been explored extensively by Burman (2016) who argues that under neoliberal ideology, developmental psychology and parenting advice have become professionalised as a way to evade the gendered and classed nature of childcare and parenting and make it a problem for parents (particularly mothers) rather than the state. The literature of attachment and early development is normed on middle class white women and thus automatically 'others' the parenting practices of working-class mothers. In her analysis of working class motherhood, the social scientist Gillies (2007) cites the influence of developmental psychology and the concomitant changing construction of childhood as key factors in the gender and class neutralisation of parenting practice and the ensuing vilification of working-class mothers.

The very notion of 'parenting' is one which has not always been around. Sociologists Lee et al. (2014) track the emergence of what they term 'intensive parenting culture' whereby mothers' actions, are seen as fundamentally determinative of a child's outcomes, and thus the outcomes of society. This is exemplified by the messages mothers receive about 'breast is best', that they must breastfeed their babies and the

ensuing feelings of failure if they cannot do so or stigmatisation if they choose not to. It also aligns with neoliberal values of individuals achieving their own outcomes, children now being included as one of the projects at which individuals must succeed.

The role of psychology and psychological discourse in producing ideas of parenting and motherhood have been detailed extensively. Attachment theory, introduced by Bowlby (1969) in particular plays a key role in ideas of how mothers should provide a secure base for their children. This has been noted by sociologists and critical psychologists as a contributor to the focus on the mother-infant relationship as primary and added to a focus on women's behaviours at the avoidance of any wider social structures such as poverty, race or social support (Lee et al., 2014).

Through discourse analysis of media sources and parenting magazines Alldred (1999) examined the role of psychology in ideas of what makes people 'fit to parent'. Alldred showed how the supposedly gender-neutral term 'parenting' is actually highly gendered and based on conservative heteronormative values. Alldred highlighted how psychology plays a crucial role in this by infiltrating parenting advice with supposedly depoliticised and neutral language which veil a plethora of value laden assumptions. In line with critical psychology and sociological critiques of psychology, adding a post-structuralist feminist lens, Alldred showed how psychology is omnipresent in parenting discourse but also invisible; making it even more powerful as it is seen as a given.

### **Women, Psychology, and the Family Courts**

I will now summarise two research studies which bring together many of the different strands of literature that have been heretofore explored. In doing so I aim to show how family courts present a nexus of the many and varied issues examined and thus are a key site for further study.

The first study, carried out by lawyer and legal academic Barnett, is a post-structural analysis of the concept and use of 'parental alienation', previously mentioned and



commonly cited in family court proceedings particularly private proceedings (Barnett, 2020).

Parental Alienation Syndrome was first written about by an American psychiatrist in the 1980s (Gardner, 1985 cited in Gardner, 2002). Gardner argued that a mother who accused her child's father of domestic abuse was enacting 'parental alienation' to keep the father away from the child. As a result, the child was said to be suffering from parental alienation syndrome pretending they did not want to see the 'hated' parent (PAS). Though a supposedly gender-neutral concept, it is clear from reading Gardner how gendered the concept was: the examples given relate to mothers being the 'loved parent'. In a later article Gardner refuted allegations that his theory was sexist saying that it was now common for both men and women to enact alienation against the other parent (Gardner, 2002).

Legal scholar Barnett (2020) conducted a genealogy, a method with its origins in the work of Foucault to examine the history of a taken for granted social practice. Using 54 published judgments from the Family courts of England and Wales, Barnett charts how Parental Alienation first came into the court arena, its acceptance as a phenomenon, and its harsh consequences for women and children. Through the genealogy, Barnett argues that the use of parental alienation has not had the desired effect in terms of contact arrangements, but it has entered the lexicon of Family courts *and "has become part of the discursive repertoire of current family law"* (2020: p.26). The effect of parental alienation claims against a mother are that they back up the discourse of the 'hostile mother' and silence the voices of women and children who have been victims of male violence.

The other study which brings together a number of strands presented in this literature review is a critical feminist discourse analysis of child protection documents, carried out by a Canadian social work academic (Azzopardi, 2022). The concept of 'failure to protect' was a focus of the analysis; this is another concept that has its roots in psychological theory, that of the maternal figure as ultimate protector of child. It is a statutory principle that is used to refer to a parent (normally mother) failing to protect their child from harm perpetrated by another individual. Examining case files where a child had been sexually abused by another figure (not the mother)

Azzopardi found that the mothers were commonly charged with the ‘failure to protect’ their children from the abuse and sometimes faced dire consequences in terms of child removal.

Azzopardi (2022) showed how discourses of the ‘*all powerful, all knowing, all sacrificing*’ mother were heavily drawn upon when making judgments about children’s safety, and that through the use of such linguistic devices as active verbs for mothers as opposed to passive verbs for fathers, much more onus and blame was put on the mother to protect the child than the father or (usually male) perpetrator who carried out the sexual abuse. As a result, Azzopardi writes, “*the problem of CSA [child sexual abuse] therefore becomes largely defined in terms of women’s acts of omission over men’s acts of commission.*” (2022: p.1648)

These two examples show how psychology has had and continues to have a significant impact on the way that mothers are constructed, and as a result treated, in the child protection arena. They also have implications for how discourses of mothers in society get reproduced.

### **Rationale For This Study**

Whilst the above studies take a critical view of family courts, motherhood, and psychology, they focus on specific concepts to do so (parental alienation and failure to protect). There is therefore a gap in the literature in terms of a broader analysis of the role of psychology in the assessment of mothers in Family courts. Furthermore, the studies outlined were from a social work and socio-legal perspective. Examining psychology in the family courts from a critical psychological lens is another area that is lacking in the literature. Frosh (2003) argues that it is important to critique psychology from within psychology; otherwise, it may be seen as a ‘fringe’ view from outside.

### **Research Question**

What role does psychology- both as a profession and a discourse- play in the assessment of mothers in family court proceedings?

## **Relevance to Clinical Psychology**

With psychologists frequently being enlisted as expert witnesses in family court proceedings, there is a duty to be aware of the potential harms as well as opportunities that may come with this responsibility. Clinical psychologists have a duty to uphold ethical duties in line with professional guidelines and human rights and equality legislation. Furthermore, the clinical psychology profession plays a role in shaping policy and decision making. The family courts are an area of concern in public life and are becoming more so with the transparency pilot, therefore it is crucial that clinical psychologists have an understanding of Family court processes and their potential for reproducing inequalities.

## **METHODOLOGY**

In this chapter I will outline the epistemological basis for the thesis, which draws on feminist theory. I will then detail how and why I used discourse analysis (DA) to address the research question. I will share the process of how I chose my sources. Finally, I will summarise how I carried out the analysis.

### **Epistemology**

In this section I will outline the feminist epistemology on which this thesis is based. First, I will give a brief definition of feminism as I understand it. I will show how feminist theory has shaped my own thinking and relates to my research. I will then introduce some key ideas from feminist epistemology- particularly those of taking a position, looking at marginalised experiences, and discursive materialism – and how they relate to this thesis.

There are different schools of thought as to whether it is important for a researcher to share their world view or even know it, when carrying out research (Mertens, 2015).

Feminist and critical theories say it is fundamental to have an awareness of the underlying assumptions on which research is based (Mertens, 2015).

Mertens outlines four research paradigms in which most research is undertaken: post-positivist, constructivist, transformative and pragmatic. My research sits within the transformative paradigm and more specifically feminism (other examples within this paradigm are critical race theory, queer theory to name a few).

## **Feminism(s)**

Defining feminism is a tall order, partly because it may be more accurate to talk about feminisms in the plural (Macleod et al., 2014). Finding a common thread, argue Macleod et al., is nigh on impossible due to the different cultural and political variations of feminisms. My own understanding of feminism, which is what I will be bringing to this thesis, draws on European and American political and academic movements and particularly those in the field of sociology and psychology.

My own journey in feminist literature and theory began when I read *Fat is a Feminist Issue* (Orbach, 2006), a second wave feminist text examining the role of patriarchy in the seemingly private matter of women's relationships with food and their bodies. This captures well the second wave feminist slogan 'the personal is political'. Whilst first wave feminism may have helped secure voting rights for (white, middle class) women, second wave feminism went further to enquire into areas of so called private or personal life and how these were still organised by patriarchy. A key area of inquiry by second wave feminists was that of motherhood; with Rich (1986) writing about motherhood as an institution to keep women subjugated. Third wave feminism, informed by post-structuralism, questioned the notions of binary gender with queer theory asserting that gender was performative (Butler, 2006) thus questioning some of the taken for granted assumptions on which second wave feminism was built.

But even if gender is performative, it is unarguable that bodies which are socialised as female or woman, are subject to greater levels of violence and disadvantage (UN

Women, n.d.) Whilst this is not denied by most post-structuralists, there is an argument that the focus on language and discourse of post-structuralist and social constructionists has led to a neglect of material reality leading for example to a refusal to engage with sciences in a meaningful way beyond the level of critique (Alaimo & Hekman, 2008).

Critical race theory and intersectionality theory have further critiqued and built on second wave 'white' feminism; for example, it does not make sense to isolate gender from race when examining violence against women of colour (Crenshaw, 1991).

When thinking about the different identity categories, sometimes referred to as the SOCIAL GRRRAAACCEEESSS, a mnemonic created by systemic therapist Burnham, I am mainly drawn to those of gender and class (Burnham et al., 2005; Totsuka, 2014). It may be that my experience as a middle class woman make me something of an 'insider outsider'; able to relate to some of the aspects of experiences but not all (Hayfield & Huxley, 2015). This may have led me to my choice of topic; mothers who are subject to family court proceedings are overwhelmingly working-class women, putting them in a particular position of (lack of) power.

## **Objectivity**

In an article entitled 'Situated Knowledges', feminist theorist Haraway seeks to give a feminist definition of objectivity (Haraway, 1988). The notion of objectivity is seen as fundamental in scientific research; how then can a feminist research agenda, which is explicit about its position, meet the criteria of objectivity in order to be taken seriously?

Haraway argues that feminism has been caught between two poles in this question: the first being the strong social constructionist one, the second being the positivist scientific one. The social constructionist argument is that all scientific knowledge is man-made (emphasis on *man*) therefore subject to powers and interests of those who make it and cannot be claimed to be neutral or objective. Relativism is an

inevitable outcome of this position whereby knowledges are all equally true or untrue due to their essentially socially constructed nature. As Mertens (2015) writes, according to social constructionism “*research is a product of the values of researchers and cannot be independent of them*” (p.65).

Conversely, the positivist scientific argument is that scientific research is a way of accurately describing a reality that exists, and the role of the researcher is incidental. Both of these positions, which Haraway refers to as relativism and totalisation are “*god tricks’ promising vision from everywhere and nowhere equally and fully.*” (1988: p.584)

Relativism, and reducing everything to language, does not sit well with a feminist world view which emphasises embodiment, particularity, and a real world beyond language (Gillies et al., 2004). The positivist view also does not marry well with feminism; indeed, it has been fuel for much critical feminist writing. It does not recognise the social location and position of the researcher.

In defining a feminist theory of objectivity, Haraway outlines the task as one of

*“how to have simultaneously an account of radical historical contingency for all knowledge claims and knowing subjects, a critical practice for recognizing our own “semiotic technologies” for making meanings, and a no-nonsense commitment to faithful accounts of a “real” world”* (1988: p.579).

This is no small feat.

Using the metaphor of vision, Haraway (1988) proposes a theory of knowing that takes on some of the tenets of positivism and social constructionism such as the acceptance of an embodied world and the use of a critical lens as to how that world gets studied and described. But it avoids the pitfalls of relativism and totalisation, claiming that taking a position allows one to see clearly and does not discredit the nature of what is seen but in fact makes it more objective.

*“The only way to find a larger vision is to be somewhere in particular. The science question in feminism is about objectivity as positioned rationality”.* (p.590)

In other words, taking an explicitly feminist position when doing research does not weaken the arguments made, as might be argued by positivists, nor does it relativise the research away as just another of many possible interpretations, as a social constructionist position might espouse. Thus, carrying out this thesis from a feminist perspective is a way to provide a ‘view from somewhere’ as to the role of psychology in the construction of mothers in the family courts.

### **Marginalised Perspectives**

Taking an explicitly feminist position is also in line with the broader transformative approach of research whereby:

*“researchers consciously and explicitly position themselves side by side with the less powerful in a joint effort to bring about social transformation”* (Mertens, 2015: p70).

The idea of positioning alongside the less powerful or oppressed to conduct research is one of the tenets of feminist standpoint theory. Harding (1996) expounds what is meant by standpoint theory, particularly expanding on the starting point which is to start research from the lives of those who are marginalised. The reason for this, Harding argues, is that most empirical research is done in a way that starts from those who have power, because those are most often the people who are in positions of doing research. By starting with marginalised lives, Harding says that more critical questions can be asked, and realities explored that are not represented by most research which reproduces hegemonic power imbalances.

The research questions in this thesis are explicitly concerned with the experiences of marginalised women, a group who both are discursively and materially disadvantaged. In this way I have been able to ask critical questions that I might not have had I started from a different perspective.

## **Material-Discursive World**

A final tenet of feminist epistemology which I wish to emphasise is the integration of the material and the discursive.

Discourse is a way of understanding how knowledge, in this case psychological knowledge, becomes a taken for granted practice that circulates and can reinforce and be reinforced by power structures. This may appear to lend itself most readily to a social constructionist epistemology, particularly with the focus on language as creating reality. However, as Parker (2013) outlines, discourse analysis can be done within almost any epistemological framework, even a positivist one though this may go against its inherently political nature. But the material cannot be ignored even when the focus is being put on the discursive.

Indeed, it is evident that in the case of women who are at risk of having their children removed from their care, this is not just a matter of language but its relation to the day-to-day realities of life for many women and children.

A purely discursive approach may eschew psychological knowledge completely, which is not something I ascribe to, nor do many feminist theorists. The feminist scientist Barad has argued that with the linguistic turn in the social sciences “*the only thing that does not seem to matter anymore is matter.*” (Barad, 2008: p.120). They argue that there has been an over emphasis on language to the detriment of the material. Rather than separate nature and culture, Barad draws on ideas from queer theory around performativity, and on the work of Haraway to argue that both can be looked at together. In a chapter in the same volume on feminism and psychopharmaceuticals, feminist science academic Elizabeth Wilson examines how the outwardly anti-Prozac movement in feminist circles was privately questioned by those who were benefiting from antidepressants themselves (Wilson, 2008). Taking a biological approach to the role and function of selective serotonin reuptake inhibitors (SSRIs), Wilson looks at how antidepressants work in the body beyond discursive



ideas around altering brain receptors. This represents a move towards integrating both the discursive and the material in feminist theory.

Thus, although this thesis takes discourse as a key object of inquiry and methodology, it is important to emphasise that the feminist epistemological standpoint I am taking is concerned with the material as much as the discursive and in fact does not separate the two.

It is important to consider how this approach applies to my perception of the risk or material harm that the children subject to these care proceedings may be exposed to. I am agnostic as to whether or not the children of mothers who are subject to care proceedings should or should not be removed from their care; ultimately this is up to the assessment of social workers and judges. Whilst these professionals are undoubtedly subject to the same social forces and discourses as we all are, this does not mean that their decisions are unfounded. It is not the purpose of this study to take a view on whether particular children should or should not remain in the care of their parents. I am, instead, interested in the discursive practices that accompany and inform these decisions.

## **Method**

### Family court judgments as data

The idea of using documents from family court proceedings came to me at the same time as the research question. In fact, it was my interest in the process of family court proceedings and experience as a social worker within this that drew me to the research question. Therefore, it would be disingenuous to say that the research question preceded the selection of data source, as the two were in actuality very linked.

The very act of choosing a judgement as opposed to the other possible avenues outlined, aligns with my area of interest, the research question and is in line with a

transformative approach to research whereby research is openly done in pursuit of social change.

I did, however, ponder whether the same questions might be better answered through, for example, interviews with family judges or psychologists who provide expert witness statements. I also considered whether I should try to get access to the whole court bundles from a local authority, rather than just the published judgments. But the former- interviews with judges or psychologists- might not give the same access to what actually plays out, as what I am more interested in is what is going on in the 'heat of the moment' as it were, rather than a professional's sanitised, reflective version. The latter, court bundles, would not likely be something that I would gain ethical approval for given the sensitive nature of the content. Further, the judgment itself is of interest as it demonstrates what is discursively important in the judge's ultimate decision.

I also thought about interviewing mothers, but this has partly been done through the Pause study cited in the section of the introduction entitled critique of the use of psychology in the family courts. The Pause research (2022) outlined earlier had gained mothers' voices; this study sought to build on this from a different angle. Also, the idea of looking at how mothers are treated by those in positions of power, as opposed to their experiences of this treatment, is I believe a socially and politically important exercise. It puts the scrutiny on those in positions of power, in this case judges and other witnesses, as opposed to the mothers who are arguably the main subject of scrutiny through this process.

There was also a pragmatic reason for looking at judgments; few other documents are publicly available from the family courts. The historic opacity of the family courts, justified by the involvement of children as vulnerable witnesses, is an ongoing issue which is starting to be addressed by the Transparency Project referred to earlier where press ability to report on proceedings has been increased.

The limitations of using published family court judgments have been outlined by other researchers (Thoburn, 2021; Saar-Heiman et al., 2023). Thoburn et al. conducted an analysis of the reasons for new-born removals based on published

judgments as well as accessing court files. One of their main conclusions is that not enough judgments are published, thus they represent a very small proportion of those that are made due to it being up the discretion of the judge whether to anonymise and publish. This is another issue around transparency of the family courts.

### **Ethical considerations**

Due to the publicly available nature of the data, and the fact that the judgments are anonymised, it was felt that there was little ethical implication of using the data. However, due to the sensitive nature of court documents and family court judgments, ethical approval was sought from the university (see Appendix A). Furthermore, although the names and information of the families are anonymised, the names of the judges, lawyers and some of the professionals involved are included. As part of this thesis, I decided to add a further layer of anonymity and not include the names of the professionals in my study.

### **Discourse Analysis**

Defining discourse analysis (DA) is a difficult exercise, which reflects its unpindownable nature and already tells us a lot about it. Given that DA is heavily concerned with language's effects on constituting reality, the idea of defining DA is somewhat of a tautology. Understanding and getting to grips with DA as a novice has been one of the more challenging parts of this thesis, as has been documented elsewhere by clinical psychology doctoral students (Harper et al., 2008).

Psychoanalyst and critical psychologist Parker (1990) defines discourse as "*a system of statements which constructs an object*" (p.191). Parker goes on to outline how discourse became a concern of psychology, and how the idea of discourse helps us examine the very discipline of psychology itself.

On the first point, Parker (1990) points to the turn to language and the influence of post-structuralist thinkers such as Derrida, Barthes and Foucault on social psychology. Foucault may have been the most influential in discourse studies, particularly with regard to psychology.

Despite the links between power and knowledge, Parker (1990) argues that discourse is not automatically synonymous with power. If it was there would be no point in trying to change it. Some discourses also go into disuse, whilst others gain prominence.

Whilst Parker (1990) argues that focussing on discourse does not mean losing a sense of the material, and in fact he states that discourse is a material practice, it is nonetheless a valid and well-worn critique of post-structuralism that the over focus on language can come at the expense of the material. As Parker writes:

*“the preoccupation with language in contemporary psychology is a symptom of an evasion of the material basis of oppression (in the practical order) on the part of academics, but an attention to language can also facilitate a process of progressively politicising everyday life (in the expressive sphere).”* (1990, p.201)

The idea of using attention to language to politicise everyday life aligns very much with my aims in this thesis.

Willig (2013) details how post structural thinking which questioned the positivist notion that language was a description of reality seeped into psychology, where so called descriptions of intrapersonal phenomena such as memory were then called in to question. This particular strand of discourse analysis within psychology has been termed Discursive Psychology (DP) as differentiated from the other strand which Willig refers to as Foucauldian Discourse Analysis (FDA). Willig recognises that despite separating these two strands, they do overlap and indeed some argue that they should not be seen as separate (Wetherell, 1998). It is, however, a differentiation that has been used elsewhere, including by feminist researchers (see Ussher & Perz, 2014) and is helpful to delineate for the purposes of defining research aims and sources. This thesis takes more of an FDA approach due to its

concern with power and the Family courts as an institution of power. It also aligns more with FDA in its explicit feminist transformative epistemology.

Parker (2013) argues that discourse analysis could be seen as more than a methodology; its strong roots in critical theory mean that it usually accompanies an explicitly political and transformative world view. Much discourse analysis in psychology has tended to come from a critical psychology lens, whereby taken for granted practices and ideas, are questioned in their political and social context, often from a specific political standpoint. Discourse analytic studies in the field of mental health have challenged the biomedical orthodoxy and interrogated how the very language used to describe mental distress is revealing (Georgaca, 2014). For example, Harper et al (2021) analysed discursive practices of mental health professionals regarding a woman who had been raped and was presenting with unusual beliefs.

#### Rationale for doing discourse analysis

There are several reasons why discourse analysis is a fitting approach and method for looking at the role of psychology in Family courts from a feminist epistemological viewpoint. These will now be outlined, as will a point of contention.

##### *Taken for granted social practices are examined.*

The use of psychology in the family courts – either with expert witnesses or through psychological language- is presented as common-sense in the public sphere. FDA encourages the scrutiny of social practices which go unquestioned, as there may well lie power in them. They also may involve the power to create normative expectations that stipulate individual behaviour or establish a theory or source of knowledge as unquestioned.

##### *Family Courts are sites of power where language plays a key role.*

Following in Foucault's footsteps where legal systems and processes are seen as an important area for inquiry, the family courts represent an arena whereby those with

state given powers (judges) make decisions that affect the lives of marginalised groups.

#### *A way to critique mainstream psychology.*

Given the research question's focus on the discursive power of psychology, this lends itself to an approach that is inherently questioning of scientific truth as espoused by positivist ideas as most of mainstream psychological knowledge is. FDA is also particularly concerned with what discourses are available in a society at a given time; thus, looking at how psychology is used gives us a sense of a 'history of the present'. For example, it might tell us what discourses are commonly drawn upon to describe people's actions and personhoods.

#### *Multiple subject positions*

The subject positions in family court proceedings are of particular interest due to the range and significance of actors who constitute them, the judge, experts, and the families. The power imbalances and positioning of these actors are extremely relevant to FDA in particular.

#### *A recognition of the role of the researcher in constructing the research.*

With its roots in post-structuralist thinking, DA invites the researcher's subjectivity and position to the analysis itself. This also aligns with a feminist way of doing research and the avoidance of the 'god trick' that was alluded to earlier (Haraway, 1988; Alldred & Burman, 2005)

#### *A point of contention*

Whilst the above points show how DA fits well with the research question and area, it would be remiss not to mention a key point of contention between the feminist epistemology that I outlined, particularly the refusal to separate the material and discursive, and the discursive methodology which inherently emphasises the

discursive. Willig (2013) summarises the varying viewpoints amongst discourse analysts as to the relationship between the material and the discursive:

*“While most would agree that ‘reality’ is of necessity mediated by discourse, and that we do not have direct access even to material reality, there are different views about the extent to which discourse is constrained by social and material structures.”*  
(2013: p.138).

Some argue that discourses can only reflect the material conditions in which they occur, whilst others propose a more interdependent relationship between discourses and material reality. Willig asserts that the relationship between material reality and discourse is one that needs further exploration in psychology. I hope to contribute to this through this research.

## **Procedure**

There is no one set way to do discourse analysis, and although various accounts of suggested steps have been documented, the process is iterative and individual to each researcher and research question (Ussher & Perz, 2014). However, as a novice DA researcher, I drew from the work of two feminist discourse analysis studies (Alldred & Burman, 2005.; Ussher & Perz, 2014). I also drew on the work of Willig (2013) which itself cites other scholars in the area.

Alldred and Burman (2005) argue that reflecting on the research process is fundamental to discursive and feminist approaches. What follows is therefore an account both of what I did but also my reflections on the process.

### Selecting the judgments

Anonymised family court judgments are published online on the National Archives website. High court family division judgments as well as lower court family court judgments are published. High court usually relates to appeal cases; care proceedings happen in the lower courts therefore this is where I focussed.

In order to decide which judgments to look at, I first read a sample of five judgments from the past ten years to get a feel for their content and density. During this process, it became clear that given the density and richness of the judgments, with each one averaging 30 pages, I would likely be able to manage an in-depth analysis of around five judgments. I then filtered by time and decided to look at judgments in the previous six months to narrow down the number. This may have missed a historical or genealogical approach, and indeed on reading some of the older judgments I was struck by more overtly misogynistic language. However, the research question was focussed on the current state of affairs.

I created an excel spreadsheet to sort through the judgments in stages (see Appendix).

Filtering by Lower Courts- Family Court on the National archive case law website from April 2023-October 2023, I was provided with 88 judgments. There was one duplicate, therefore the total was 87.

My inclusion criteria to narrow down the judgments were:

- Judgments pertaining to public law proceedings (i.e. where the Local Authority brings the case against a parent or parents)
- Within public law, I wanted to look only at care proceedings (i.e. where the Local Authority was making an application for removal under Section 31 of the Children Act)

Figure 1 shows a flow diagram which represents the exclusion process.

A large proportion, 43 of the 87 judgments were private law cases. This could largely be gleaned from the titles of the judgment such as AW v EH, which denotes the initials of two parents, as opposed to public law where one of the parties is always a Local Authority.



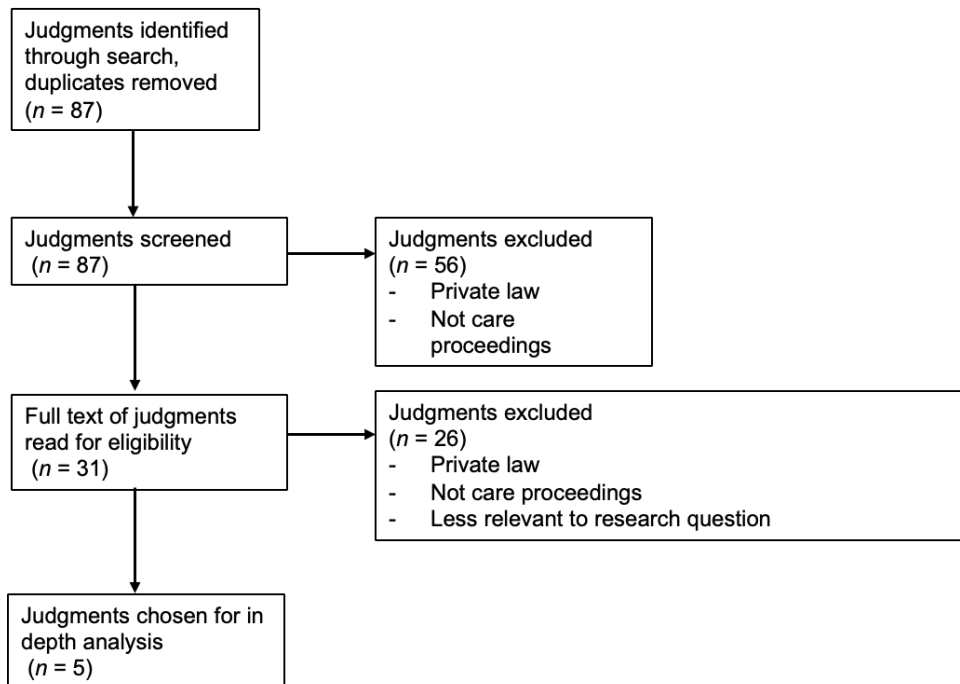
For the remaining 44 judgments, I first read the judgment title and if it contained a clear marker that it was not regarding care proceedings (for example Fact Finding, Civil Restraint, Child Arrangements orders) I excluded these. This excluded a further 13 judgments.

For the remaining 31 judgments where it was not clear from the title whether they met the inclusion criteria, I opened the judgments individually and read them to get an understanding of what they were concerning. I excluded those which were concerned with supervision orders. Some of the judgments on further reading were private law cases, case management hearing or fact finding but this was not clear from the title. Due to the length of the judgments and estimation of how many I would be able to analyse given the density, I also decided to exclude by which were more relevant to my research question. Based on my knowledge of the topic area and experience in the field, I was able to use this to determine which judgments would best provide exemplification of the use of psychology in the assessment of mothers. This stage excluded 26 judgments, leaving me with five judgments on which I carried out the in-depth analysis that is shown later in this thesis.

Whilst I have presented the process as a very linear one, it was in fact more iterative as I was constantly refining my research question whilst reading the judgments. It is notable, as will be outlined in the analysis section, that the five judgments which I was left with all concerned babies or very young children. This may also speak to my initial catalyst for this research which was my involvement in care proceedings with mothers of new-born babies. Additionally, as outlined in the literature review, under one-year olds are over-represented in care proceedings.

## Figure 1

*Flowchart of exclusion process to identify judgments for analysis*



### Analysing the judgments

In her summary of FDA, Willig has six stages for doing discourse analysis which are outlined in Table 1.

**Table 1***Stages of FDA adapted from Willig (2013)*

<u>STAGE</u>	<u>QUESTIONS</u>
DISCURSIVE CONSTRUCTIONS	Identification of the different ways in which the discursive object (in this case psychology and psychological discourse) is constructed in the text
DISCOURSES	How do discursive constructions differ? What wider discourses are drawn upon? E.g. biological, trauma, feminist
ACTION ORIENTATION	What function does the discourse serve?
POSITIONINGS	What subject positions are made available? E.g. bad, sad, mad mother.
PRACTICE	What are the possibilities for action as a result of the discursive constructions? e.g. judges can diagnose mothers with personality disorder
SUBJECTIVITY	What can be felt, thought and experienced from within the subject positions? e.g. guilt, shame, absolution

Once I had the judgments, I read them through individually and started to look out for sections or text that related to the research question. I did this in an unstructured and broad way to begin with and jotted down my initial thoughts and impressions after reading each judgment. I also spoke to my supervisors about my initial thoughts and shared excerpts of the judgments with them to have a conversation about them. Alldred and Burman (2005) recommend having a research team to bounce ideas off. Whilst resources and practical constraints meant this was not possible, I used my supervision conversations to do this as best I could.

Reading the judgments elicited quite strong feelings in me; it took me back to my time as a social worker and the stories of the women that I worked with. I sometimes felt quite upset, angry, tired when reading different judgments. They are also very

long and dense, which gave me the feeling of not getting to grips with the whole judgments in their entirety. They all contained sections where legal protocol was recounted including sections of the Children Act, and case law. Whilst I read these parts, I largely skimmed them as I wanted to focus on the areas that were most pertinent to the research question. However, I do wonder how in fact the inclusion of these more standardised sections of the judgment may act as a way to neutralise or add an air of validity to the document as a whole.

I had a particularly strong reaction to one of the judgments which was written very differently from the others in tone; it appeared much more compassionate and humane, but I also found it patronising and disingenuous.

It was immediately clear that there was a lot of content in each judgment that was relevant to the research question. At this point I attempted to create some 'themes' to help make sense of the data due to the sheer amount of it. This is something that Ussher & Perz (2014) recommend doing in sort of amalgamation of thematic analysis with DA. These themes were: 'child's needs', 'attributes of parents', 'expertise', 'risk', and 'psychology'. The final one was where there was explicit reference to mental health or psychology. Whilst creating the themes gave some structure to my thinking, it did not actually move me along very far in getting from discursive constructions to discourses. I also realised that much of what was under the umbrella 'psychology' theme could be broken down further and was the most relevant to the research question despite my being interested in the other themes and them being tangentially relevant.

Whilst I will present the six stages of analysis in Figure 1 as linear, in actual fact they were much more recursive. In order to break down my analysis into the stages I first wrote out a narrative account of each judgment noting what discourses were at play and including long extracts (see Appendix C). I had tried to start with the six stages but found that I was losing the richness of the data, and therefore felt it was more congruent with my own process and way of working, and perhaps the methodology itself, to start with fuller accounts of each judgment, before then moving to something more streamlined so as not to lose the richness. A lot of the analysis occurred whilst writing as well as a culmination of conversations, reading and thinking.

The Analysis and Discussion sections which follow will detail the substance of the stages of the process from Discursive constructions to Subjectivity.

## **ANALYSIS & DISCUSSION**

### **Summary of judgments**

All five judgments were from final care proceedings where the Local Authority had applied for care and placement orders. This relates to Section 31 of the Children Act 1989. A care order means the Local Authority takes full parental responsibility for the child, and a placement order means that the child will be placed for adoption. In all five cases the judges granted these orders. In the pen portraits of the judgments below I have used the anonymisation scheme that is used in the judgments so that the reader can get a feel for how it is to read them. After this I have used generic labels of 'the mother', 'the child', 'the father', 'the psychologist' etc., partly for the reader's ease but also to highlight the various subject positions. It should be noted that the doctor title is used for psychologists in the original judgments. After introducing the judgments with their full reference, I will then continue to refer to them by the number given to them, e.g. for [2023] EWFC 106, I will refer to it as 'judgment 106' again for ease of reading.

### **Pen portraits of the selected judgments**

#### Judgment 106

23/08/2024 10:09:00The judgment concerns a child of one year and two months of age, who is given the pseudonym Tilly. Her mother, given the pseudonym Amy, is twenty-three. Tilly's father, given the pseudonym Mr X, is described as not taking part in the proceedings. His age is not given. Amy and Mr X had a previous child Beth (not her real name) who was removed from Amy's care under a care order. At the time of this current hearing, Tilly had been removed from Amy's care under an interim care order due to concerns about Tilly's safety in her Amy's care. According

to the judgment the main concerns were around Amy's mental health, difficulty working with professionals and Amy's choices in relationships. ([2023] EWFC 106)

#### Judgment 146

Child (referred to as [the Child]) is aged one year and one month at the time of proceedings. The child's mother (referred to as [the Mother]) has had a previous child removed from her care. After [the Child]'s birth, proceedings were initiated due to [the Mother]'s history of cannabis and alcohol use. [the Child] and [the Mother] were moved to a residential unit, followed by a semi-independent living setting. [the Mother] left the second placement saying she could no longer care for the child. [The child] was removed by the Local Authority on an Interim Care Order and is in foster placement at the time of the proceedings. [the Father] does not put himself forward to care for [the Child]. The paternal grandmother [the PGM] is put forward as an alternative carer but this assessment is negative. The mother wishes to care for the child. ([2023] EWFC 146)

#### Judgment 77

This judgment concerns a three-year-old boy who is given the initial 'Z'. Proceedings started when Z was roughly one and a half. Z's mother is referred to in the anonymised judgment as 'the mother'. The father is referred to as 'the father'. The parents are described as young. The mother is described as having social care involvement in her childhood, and the father is referred to as a care leaver. The concerns for Z's welfare and reasons for the Local Authority's care application are 'inter-generational neglect' from the mother's side, a history of criminality and mental health difficulties on the father's side, and exposure to domestic abuse 'between the parents'. At the time of the hearing Z was in a foster placement where he had been for a year. Before that he had been in two mother and baby foster placements. The mother was often absent from the placement leaving Z with the foster carer, and Z sustained some injuries whilst in his mother's care which were thought to be due to lack of supervision rather than physical abuse. Z and the mother were then placed in a residential parenting assessment unit which broke down due to concerns about the mother's care of Z and her behaviour towards staff. ([2023] EWFC 77)

### Judgment 135

This judgment concerns a child 'A' who is 10 months old at the time of the hearing. The mother is referred to as 'M' and the father is referred to as 'F'. Both parents have had previous children who were removed from their care in care proceedings. The concerns about A relate to M's historic alcohol use, exposure to domestic abuse from F to M, and both parents' inability to accept their failings in parenting for their previous children and A. F also has a diagnosis of paranoid schizophrenia, which is reported to be unmanaged. The father is not putting himself forward for the care of A. The mother is. ([2023] EWFC 135 (B))

### Judgment 152

The child is a two-year-old boy given the pseudonym Joe. The mother, given the name Jane, is described as a Care Leaver with poor mental health and forensic history, history of self-harm and suicide, and diagnoses of ADHD, OCD and EUPD. The father, referred to as Jack, is reported to have problems with drug and alcohol use, violence and poor mental health. After his birth, Joe was placed in a residential unit with his mother, which broke down. Joe was then placed in Jack's care however Jack was then convicted of driving under the influence of cannabis. A parenting assessment of the mother was negative. ([2023] EWFC 152)

### Style of judgments

The judgments all followed a fairly consistent template, mostly including a background section outlining the history of the case and the concerns, a section on the relevant parts of the Children Act and case law which guide the judge, an overview of the evidence from different parties (parents and professionals), and a summary of the judge's decision making and final decision.

Four of the five judgments were written in a similar style whereby although the judge used the first person, the documents were very legalistic and seemed to follow conventions. One of the judgments, 106, was written quite differently from the other four in style and tone particularly in the included short judgment which is something that is included for parents as a more digestible summary. The judge writes in the first person throughout and its tone could be interpreted as compassionate and more humane. For example, the judge apologises for being the cause of harm to the mother and the child. However, I experienced the tone as somewhat condescending. This may link with the references to the mother's age and vulnerability, and it did feel as though it was written for a child. I could see what the judge was trying to do, and indeed it would likely meet the criteria for a more 'trauma-informed' judgment. But something about it did not sit comfortably with me, perhaps because the ultimate outcome was the same in terms of removal of the child and as a result felt somewhat disingenuous to me. However, it may have been received better by the mother than some of the other judgments, as it did feel that care was taken over its communication.

### **Discourse Analysis**

I have chosen to present the discourse analysis largely within 'interpretive repertoires' (e.g. mental health, personality: Willig, 2013) within which I have delineated the first four stages outlined in Willig's table. The seven interpretive repertoires are:

1. Repeating Patterns
2. Primacy of the Mother Infant relationship
3. Mental Health
4. Personality and personhood
5. Insight and 'intelligence'
6. Therapy and support
7. Fathers

For each of the seven interpretive repertoires I have described the discursive constructions, discourses, action orientation and positionings. I have presented the



final two stages 'practice' and 'subjectivity' separately as they largely overlap across interpretive repertoires.

## 1. Repeating Patterns

### Discursive constructions

It is clear just from the pen portraits above that the families represented echo many of the features that are outlined in the introduction; having their own histories of care involvement, having previous children removed, and with various mental and physical health diagnoses. The age of the parents is also noted in several of the judgments. In judgment 106 the mother is said to have been "*only a child when she started having adult relationships*" (p.3)

In judgment 77 the mother is described as having social care involvement in her childhood, and the father is referred to as a care leaver. The concerns for the child's welfare and reasons for the Local Authority's care application include '*inter-generational neglect*' (p.2) on the mother's side. This phrase is attributed to the Guardian and Local Authority by the judge.

In judgment 152, the mother's "*significant social care history where she experienced abuse and neglect*" (p.2) is listed as the first point in the list of key issues at the time the proceedings commenced.

Later on in judgment 152, the psychologist is reported to have stated in their report that the mother "*normalise[s] violence due to her experiences*" (p.11).

### Discourses

Psychology discourses around trauma, attachment and parenting are employed through references to mothers' own experiences of poor parenting as an indicator of their parenting capacity (Faircloth, 2023).

The notion of 'intergenerational neglect' centres the role of parenting in child outcomes as opposed to for example other structural issues such as poverty (Lee et al., 2014). The trauma discourse is invoked as the mother is presented as being traumatised by her childhood, leading to her inevitable deficits in her own capacity as a parent.

The mechanisms by which one repeats the experiences one has had is suggested in the quote from judgment 152 about the mother 'normalising violence'. This relies on a psychological discourse of people repeating behaviours that they have been exposed to, drawing on social learning theory (Bandura, 1969).

The lone teen mother discourse is also activated by the inclusion of the mother's age, and ideas of promiscuity are also implied through references to mothers' sexual relationships (Gillies, 2007).

### Action Orientation

What is the purpose of including such information about parents' own childhoods? It is stated in most of the judgments that the fact of the parents having experienced trauma, poor parenting, neglect, or the care system, automatically imbues risk to their children. The parents are therefore starting from a deficit which they need to make up for.

Focussing on the parents' own experiences of social care may also serve the function that it is best to remove the baby early and have it adopted, to avoid it having a similar fate of the care system.

Ideas of intergenerational trauma, whilst helpful for understanding the experiences of children of survivors of war and genocide, have arguably been co-opted by social work and mental health professionals with indigenous populations to maintain power structures and blame parenting practices as opposed to societal structures and colonial histories (Maxwell, 2014).

By keeping concerns at the level of the family, there is also no need to interrogate wider factors like deprivation, social support, or discrimination, all of which are known to significantly impact on parenting capacity (Bywaters & Skinner, 2022).

### Positionings

By citing the childhood traumas that mothers have experienced, they are positioned as victims, but also inadvertent perpetrators through their likely transmission of the same experiences to their own children. The parents of mothers, most likely their own mothers, are also heavily implicated by including the mothers' life histories.

## **2. Primacy of the Mother-Infant Relationship**

### Discursive constructions

The mother's emotional stability and wellbeing is seen as almost a stand-in for that of the child. Indeed, as one of the judgment's states:

*"It is clear that someone who is being abused even remotely in the way that M described, would put any child they were caring for at risk of being exposed to consequences of that abuse – in other words, how F made M feel is bound to be seen and felt by A."* (Judgment 135, p.22)

The interlocking of the mother's experience as a victim of abuse and the child's inevitable exposure demonstrates the primacy of the mother-infant relationship.

Putting a child's needs above one's own appears to be a prerequisite for being considered a good enough mother. Not doing so automatically puts one in the bad mother category. In judgment 106 the mother is criticised for choosing relationships that are risky and this is described in the language of prioritising her own needs:

*“[The mother] has not always been able to put her children’s needs before her own need to have a relationship. She has not always made good choices in her relationships.” (p.3)*

Framing the experience of domestic abuse as a result of a women’s poor choice is a clear victim blaming trope. Using the language of attachment and prioritising her own needs over her child’s further vilifies the mother.

In judgment 135, there is a passage about how the mother did not ask the foster carer in the placement how to switch on the hot water apparently due to embarrassment, therefore washing the baby in cold water. The mother is criticised by the judge for *“putting her needs before those of [the child]”* (p.17) and having low self-esteem. It is unclear how the mother’s embarrassment is a need. The judge comments that *“[the mother] should have asked the foster carer if she was not sure, that is what a good enough parent would do”* (p.16)

### Discourses

Whilst evidently the example above around the hot water would be concerning, it is interesting that what it leads to is the activation of psychological discourse around the mother prioritising her own needs and her lack of self-esteem. There seems to be a desire or need to attribute it to the mother’s internal processes. This is consistent with the ‘psychologisation’ of everyday life whereby psychology subtly enters all areas of life (Rose, 1998).

It also accords with mothering discourses as exemplified by the ‘good enough parent’ comment (Rich, 1986). The good enough parent has its origins in Winnicott’s concept good enough mother (Winnicott, 1960). Despite the gender-neutral term parenting being used here, it is recognised that this language often obfuscates the highly gendered nature of childcare and mothers being scrutinised much more harshly for their parenting practices (Alldred, 1999)). The good mother is all sacrificing and puts her own needs below those of her child (Azzopardi, 2022).

## Positionings

The 'bad mother' position is created by allusion to what a good mother should do or be; by not being explicit it could draw on middle class white European norms of mothering. Through the use of attachment language, mothers are shown to be failing to meet the expected standard of good enough. Further, the inclusion of ideas of intentional prioritisation of their own needs positions mothers as actively choosing to prioritise themselves over their child, cementing their position as deficient and even malevolent.

### **3. Mental Health**

#### Discursive constructions

In three of the five judgments the mental health of the mother is listed as a key cause for concern and reason for proceedings (Judgments 106, 146, and 152). The other two judgments refer to the mothers' personality traits and emotional regulation, but do not explicitly couch this in the language of 'mental health'.

The mother's mental health is referred to in the list of 'issues' in each of the three judgments 106, 146 and 152:

*"The main risks to Tilly come from [the mother]'s mental health, her difficulties in working with others, and from [the mother]'s choices around relationships"* (106, p.1).

Listing 'mental health' alongside other concerning factors is repeated in judgment 152:

*"The mother is a Care Leaver with a significant history of neglect, emotional abuse, substance abuse, mental health issues, domestic abuse relationships, self-*

*harm attempts and significant childhood and early adulthood trauma including grooming” (p.4)*

The use of ‘mental health’ in a list form alongside other risky things such as domestic abuse suggests ‘it’ is well understood to be a risk, particularly in a mother.

In judgment 146 the mother’s mental health is also referred to in the list of issues:

*“It can be seen the issues for the parents are longstanding and to an extent somewhat entrenched and comprised:*

*[i] significant mental health and personality related issues largely deriving from their childhood upbringing*

*[ii] longstanding abuse of drugs*

*[iii] Problematic close interpersonal relationships including domestic abuse”*

*(146, p.6)*

It is notable that in both judgment 106 and 146, the mother’s mental health is listed within the first concern and may point to the discursive weight given to it. It may also point to the judge’s narrative arc whereby mental health is seen to be the cause of the other issues, so may sequentially come first as a result.

The inclusion of psychiatric diagnoses of the mothers appears in judgments 106 and 152:

*“[the psychologist] has diagnosed of a recurrent depressive disorder with symptoms linked to post traumatic stress.” (Judgment 106, p.7)*

In judgment 152, the mother’s mental health and neurodevelopmental diagnoses are listed in bullet points on the first page:

*“The key issues at the time proceedings were commenced were identified as:*

- Mother’s significant social care history as a child where she experienced abuse and neglect*

- *mother's poor mental health and history of self-harm and suicide attempts.*
- *Mother's complex needs as a result of her diagnosis of Autism Spectrum Disorder, ADHD, OCD, and Irlen's Syndrome"*
- *Mother's forensic history with a violent offence in (a date) a stabbing and a suffocation of a cat in (a date)"*

(p.2)

Later in the judgment it is reported according to the psychologist that:

*"Jane is diagnosed with Generalised Anxiety Disorder and Emotionally Unstable Personality Disorder." (Judgment 152, p.8)*

Of note is the fact that, apart from issues around her 'personality' and 'complex needs', the impacts of all these disorders are not expanded upon elsewhere in the judgment. There is allusion to the mother's difficulty in misunderstanding things, but nowhere is this related to her diagnosis of Autism for example.

In judgment 106, there is an acknowledgment of how mental health may be impacted upon by not just past experiences but also ongoing ones, including the court process and social work involvement. The judge here is writing in the first person:

*"I cannot imagine how hard it can have been for this vulnerable young woman to be experiencing all these feelings and emotions at the same time as caring twenty-four hours a day for her baby, all the while with non-family members living in her house. Add to that the experience of a further loss of a pregnancy in November, and it is not at all surprising that Amy's mental health took a turn for the worse." (p. 13)*

This judgment also points to the actual lived experience of 'mental health' beyond an abstract construction, with space given to the mother detailing the nature of her trauma symptoms (Judgment 106, p.8).

The term 'mental health' is used in Judgment 106 without any qualifier such as 'poor' or the impact of it on parenting, though this is expanded on at other points in the judgment.

In the judgments where a qualifier is used around mental health, its impact is rarely expanded upon particularly with regard to its impact on parenting.

### Discourses

The idea that mothers having mental health problems automatically presents a risk or a concern draws on discourses of both motherhood and mental health (Rich, 1986; Ussher, 2011). Mental health problems are implicitly understood to be concerning, especially in a mother. This may again draw implicitly on attachment and parenting discourses due to the link between the mother's mental state and that of her child (Faircloth, 2023)

The idea that mental health is itself a risk or a concern can be seen to draw on discourses of mental (ill) health or madness (Ussher, 2011).

The inclusion of diagnoses and discussions around medication draw heavily on the biomedical discourse of mental health which is the predominant model particularly in psychiatry but also in most of psychology (Haslam & Kvaale, 2015). The biomedical discourse sees mental health problems as biologically caused, relies on diagnosis and psychiatric medication as the main mechanism for change.

This may seem to contrast somewhat with the inclusion of the trauma discourse. However, judgment 106 is an example of how the two work together; the mother's mental health problems are attributed to traumatic experiences, but the impact of this is that she needs both therapy and crucially to get the right medication.

### Action Orientation



The inclusion of mental health in the list of concerns without any allusion to the impact of these on parenting or risk to the child suggests that it is understood to be a cause for concern.

The biomedical discourse provides a stamp of scientific truth to a mother's presentation. It also may serve the function of keeping her 'locked' in this position. Diagnoses are rarely something that leave a person even if they are said to have recovered and they attract stigma (Kvaale et al., 2013). For example, in Judgment 152, where the mother has multiple diagnoses including emotionally unstable personality disorder, the mother is stated to be '*stable from a mental health perspective currently*' (p.4). This doesn't stop the judgment from being mired in references to her multiple diagnoses, personality disorder particularly being seen as one that cannot be recovered from (Shaw & Proctor, 2005).

Though potentially a more holistic view than a purely biomedical one, the trauma discourse may nonetheless function to keep mothers as 'broken' and without hope for being 'fixed' without a considerable amount of therapy which, as will be discussed elsewhere, they are unlikely to have accessed (Tseris, 2013; Pause, 2022).

Furthermore, whilst the extracts from Judgment 106 may denote a more compassionate discourse around mental health than some of the other judgments, their location in the text may say something about the relative weight and power given to them in the ultimate determination. As opposed to the list of issues that appears at the beginning of the same judgment, where 'mental health' is top of the list, which serves the function of justifying the judge's decision to remove.

This dynamic is observed by the mother herself in Judgment 106 who is reported by the judge to have stated, regarding her stopping taking medication for her mental health:

*"I find it hard to express my concerns about things when it comes to taking tablets – I don't want to rely on tablets all the time to make me feel happy but I realise it is what I need – but whole part of me trying to beat the part of me that is saying don't ask for help – I am like I am constantly battling myself on the inside – it kills me*

*half the time – that stops me talking to the doctor. It feels like it makes me think I look weak or social are going to use it against me, or if I do this then they may say it's good, but use it against me down the line. It is a constant battle in my head"*  
(p.8)

It is also quite an accurate description of the way that in this judgment the mother is indeed praised by the judge for talking about her mental health, yet it is listed also as the key concern and ultimate reason for removal of the child from her care.

The mental health discursive constructions also usefully place all the focus on the mother and obfuscate the role of others, including fathers and the wider systems around including professionals, thus absolving them of responsibility for the risks to the child by placing the blame internally in the mother.

The inclusion of the mother's multiple diagnoses on the first page of judgment 156, with very little mention of their material impact on herself or her parenting, immediately build an image of a problematic, 'mad' woman at the beginning of the judgment. The inclusion of the mental health diagnosis directly before the forensic history is also of note and draws on the 'mad and dangerous' discourse.

At the most fundamental level, the mental health discourse provides significant weight to the judge's reasoning as to why the mother cannot have the child in her care and thus plays a key role in the argument for removal.

### Positionings

The mental health discourse serves to present the mother as either victim or perpetrator, or both, depending on the part of the judgment in which they are placed. In fact, the language of mental health may be one of the key mechanisms that moves mothers from the victim to perpetrator position.

The biomedical discourse also positions mothers as patients, or passive recipients of care and treatment as opposed to active agents; this is in line with women's historical societal role as passive objects. Further, if mental health is seen as beyond

the control of the mother through either a biomedical or trauma discourse, this leads to mothers being positioned as 'sad' or 'mad' more prominently than 'bad' (Appignanesi, 2010)

#### 4. Personality and Personhood

##### Discursive constructions

Mothers' scores on psychometric tests, including personality tests, as assessed by psychologists, are referred to in two of the five judgments:

In Judgment 146, early in the judgment where the Judge is giving a picture of the mother, the judge refers to the psychologist's report:

*"in which he [the psychologist] concludes [the Mother] has a number of significant personality difficulties with emotionally unstable and impulsive sensation-seeking personality traits. Alongside this she shows a severely insecure adult attachment style with elements of both anxious avoidant and anxious dependent attachments structures."* (p.4)

The words "emotionally unstable" also appear in Judgment 152 where the mother has a diagnosis of emotionally unstable personality disorder (EUPD), and this is sometimes substituted for 'personality disordered traits' (p 18, p.20.) or 'personality profile' (p36).

Also of interest is that the mother's 'personality profile' is picked up on throughout, whereas her other diagnoses do not seem to be.

The charge of emotional instability is in stark contrast to descriptions of professionals, which talk about reasoning and rationality:

*"[the social worker]'s reports were fair, based on a thorough review of evidence... she gave clear reasons for her analysis... which were justified from the information she obtained"* (Judgment 106, p.10)

*“I found the evidence of the Guardian to be extremely helpful... balanced and fair, but also realistic” (Judgment 77, p.19)*

In the judgment where the mother has a diagnosis of EUPD there is a stark contrast between the following description of the mother as irrational followed straight after by a shorter, succinct summary of the guardian which presents a rational individual:

“

- *Mothers case, in simple terms is that “the evidence before the court is tainted by “Chinese whispers”; she has been “prejudged” by the social worker whom she also accuses of “lying” in her final statement; [the first assessment unit’s] assessment was “biased”; [the second assessment unit’s] assessment was “rushed”; [the second assessment unit’s] second assessment should effectively be ignored; [the second assessment unit’s] staff have also prejudged her and were biased. She relies upon her own evidence and the father’s support. In short, everything done to date is unfair.*
- *The Guardian’s final analysis is dated [a date] and strongly supports the Local Authority and the making of a final care and placement order. It is a very comprehensive and balanced report, and her conclusions and reasoning are detailed, clear and justified.” (Judgment 152, p.7)*

The use of quotation marks to describe the mother’s words appear throughout the judgment. Even when there are no adjectives used to describe the professionals or the nature of their evidence, the lack of questioning and presentation of their evidence as fact implies an inherent weight and trust in what they say as opposed to what the mother says which is often questioned. For example, in the same judgment, there is a description of one of the units where the mother stayed; she is described as finding it difficult to work with different members of staff and that she felt she was communicated different things by different people. The professional from the unit is described by the judge as follows:

*“[the team manager] did not consider it to be intense monitoring as mother submitted, nor was it a pressurised environment. It was mother’s own actions that*

*changed the environment. They tried very hard to maintain staff consistency, there were up to 23 staff members but usually one on the floor for each mother. The workers had tried to work with the mother, but she was abusive and used bad language on occasions. (Judgment 152, p.33).*

The staff are presented as doing their best and acting in a rational way. The mother's feelings about the pressure of the environment are dismissed as her fault.

I could only find one example across the five texts of a professional being associated with anything other than rationality or reasonableness. In judgment 106, the judge describes the social worker's report as displaying "*frustration*" (p.3) regarding the mother's rebounding to her relationship with the father and consequent pregnancy which was then terminated.

*"There is a certain level of frustration in the report about the way that [the mother] went about seeking out [the father], even though he has repeatedly rejected her. [the independent social worker] was concerned about [the mother]'s lack of honesty with herself or others about why she did it, and how this all led to her becoming embroiled in a relationship with [the father] that was unhealthy for her, and which led to a pregnancy which then created a really difficult situation for her to manage emotionally, and compromised her ability to care for [the child]"*  
(Judgment 106, p.3)

As well as portraying the social worker's frustration, this extract also shows some misogynistic discourse and victim blaming.

In Judgment 135, the mother's personality traits are said by the psychologist to be part of the reason that she has been the victim of domestic abuse:

*"[the psychologist] concluded that [the mother]'s compulsive traits place her more at risk and make it more difficult for her to change her behavioural patterns: 'Compulsive traits are associated with vulnerability to manipulation from those considered to be important as well as behavioural patterns that are difficult to alter. She remains in a relationship with [the father] despite her suggestion that*

*she considers him to be abusive and states that this is an issue she must "get round to", despite the concerns being expressed about this relationship by professionals.' "(pp. 23-24)*

In the same judgment, it is reported that the mother does not agree with the findings of the psychologist regarding her personality traits:

*"The mother disputes that she displays compulsive personality traits other than when she is drinking... She has not sought to challenge [the psychologist] about his conclusions in relation to this" (Judgment 135, p.10)*

The judge ultimately comes down on the side of the psychologist, further detailing their rationale which seems somewhat void of much substance:

*"[the psychologist]'s updating report dated 11<sup>th</sup> November 2022 (E52-E83) seems very clear that her underlying personality traits leave her vulnerable to others and alcohol misuse, rather than these personality traits being caused by alcohol misuse: "[the mother]'s alcohol use difficulties have been extensive in terms of their severity and long-term nature. Even should she achieve full remission from alcohol use disorder there will remain psychological concerns as to her capacity to maintain this in the longer term. As a parent within the community, parenting on her own, she will experience increased parental and environmental stressors. Her indicated personality traits, consistent over time, will continue to make her vulnerable to the negative influence of those who she knows or considers to be important. She herself therefore must be motivated to maintain effective distance from ex- partners or any individual who may seek to exploit her" (E62). I therefore find that [the mother] does display avoidant and compulsive personality traits..." (Judgment 135, p.10)*

The last line, a legal convention whereby a judge 'finds' the evidence is very curious when the evidence is around someone's personality traits.

In judgment 152, the mother is said to have made an application for the psychologist to be cross examined but the Judge writes that “*that application was ultimately not pursued at this hearing*” (p.11). No reason is given as to why.

### Discourses

The use of personality testing draws heavily on psychology and the idea of a self which can be studied, known and categorised and is separate from the social world (Rose, 1998)

The use of labels such as “emotionally unstable”, compulsive personality traits and attachment styles also draw on the biomedical discourse and discourses of women’s madness (Ussher, 2013). Such labels are also highly gendered and thus also draw on gendered discourses such as the irrational woman (Ussher, 2024). In contrast, the use of adjectives associated with rationality and clarity for professionals draws on the discourse of professionals as neutral and rational.

### Action orientation

Use of personality measures adds a scientific air to the evidence provided by psychologists, possibly justifying their position as experts and that they can add something beyond that which other professionals can (Bogaardt, 2022)

The portrayal of mothers as irrational and emotionally labile, may also add to a picture of a mother who is ultimately not fit to care for their children. The function of the rational, neutral professional may be to further entrench, or act as a foil for the position of the mother as an emotional irrational woman in contrast (Ussher, 2013).

The use of personality measures, and particularly the label of emotionally unstable, may also be a stand in for a more qualitative examination of how professionals find these mothers interpersonally challenging and difficult to work with. It functions well in this way and takes the focus away from the relational to the individual, inner process. For example, in the extract from Judgment 106 where the mother’s ‘defences’ are alluded to this is in reference to a relational process, i.e. the mother being given advice by professionals. More contemporary psychoanalytic or systemic theory might talk about the relational aspects and indeed the power dynamic

between professionals giving a mother advice (Dancey & Hellin, 2022). Sticking to an internal, decontextualised narrative of a person's behaviours however is one way that psychology effectively makes oppressive social and political contexts invisible and irrelevant, and in so doing justifies their continuance (Rose, 1998).

### Positioning

Personality and personhood discourses position mothers as active agents in their decision making as the result of their personalities (i.e. selves?). This includes even their victimhood of domestic abuse as evidenced by the extract which links the mother's compulsive personality traits with her vulnerability to abuse. Similarly to mental health, ideas around personality may also serve to lock mothers into positions; personality even more than mental health is seen as fixed and immutable. Professionals, on the other hand, largely enjoy a position of moral high ground and reasonableness which cements their evidence as trustworthy and reliable.

The power of the EUPD diagnosis is also notable. The judgment in which the mother has this diagnosis I found to be the most 'damning' of the mother in terms of how she is represented. It is in my view not coincidental that the mother has a diagnosis of EUPD; one which attracts stigma and strong feelings in those who work with people with the diagnosis (Shaw & Proctor, 2005).

## **5. 'Insight' and intelligence**

### Discursive constructions

In judgment 77, the mother's lack of 'insight' is cited as a key concern. This is even though the mother is said by the psychologist to meet the criteria for an intellectual disability; the two things are never put together. The inclusion of this quite significant fact about the mother's learning needs is passed over quickly and there is even the implication that her learning disability is partly her fault, or at least a result of her life experiences, as the following quote suggests:



*“[the psychologist] assessed the mother as meeting the criteria for an intellectual disability and considered that her “cognitive development is likely to have been adversely affected by poor engagement in formal education” (Judgment 77, p.11)*

The phrasing of poor engagement in education implies the mother’s decision however what is known about her childhood, which the judge does go on to add, is that she experienced neglect and instability.

The fact of the mother having a learning disability does not feature as a cause of her ‘lack of insight’, and this lack of insight is used as evidence for her representing a risk to her child:

*“The mother experienced a poor level of parenting herself but her lack of understanding or insight into that, despite the best efforts of professionals, means that she is likely to replicate something similar with [the child]” (Judgment 77, p.22)*

The reasons for the mother’s lack of acceptance of her own difficult childhood are seen as unfathomable.

The idea that something must be understood or accepted before it can change, as well as the mother’s intelligence are further commented upon in the following extract:

*“[the psychologist] was of the view that the mother struggles with “logical reasoning, proactive independent thought” and has “limited ability to critically appraise her own behaviour or understand the world from the perspective of others, including [the child]”. The mother would find it difficult to make changes as she struggles to see the need for change, hold [the child] central or mentalise his experiences and needs, as being separate to her own. [the psychologist] concluded that “the information available strongly suggests that [The mother] will parent as she was parented herself and that, in her care, [the child] will be exposed to violence, neglect and poor role models. It is likely that his life experience will be limited and he will fail to reach his potential”. (Judgment 77, pp.11-12)*

The mother is presented as lacking in skills that are generally associated with intelligence (logical reasoning, critical appraisal) and this is couched in professional, scientific language by the psychologist.

Lack of insight and understanding from a mother are also referred to in Judgment 152:

*“She also shows a significant lack of insight into and / or significant minimisation of the day-to-day concerns of all of the professionals about her ability to cope with care of Joe with all of her own difficulties. Of course this lack of understanding is sadly not unusual in these matters.”* (p.16).

It is not clear exactly what the judge is referring to in the last sentence but it does seem to reveal a disparaging view of parents, and mothers, in family court proceedings.

### Discourses

Intelligence is a fundamental psychological discourse. Indeed, the history of psychology shows that the profession’s prominence was largely aided by the use of intelligence testing and its link with the eugenics movement (Rose, 1985b). Like personality, intelligence is seen as a fixed inner trait which locates problems within the individual as opposed to relationships or systems. For example, the social model of disability purports that people are disabled by society’s lack of adaptation to their needs, rather than people being inherently ‘disabled’ (Shakespeare, 2006). But even if a parent doesn’t have a diagnosed learning disability, ideas around intelligence, education and class may also be at play for example in the last extract shared where the judge points to a generalised attitude to parents in the family courts.

The ‘insight’ discourse is a related but distinct one, which draws more on therapeutic concepts around change and that a person needs to have an understanding of a problem before they can change it (Moynihan, 2015). Smail (2004, cited in Harper & Speed, 2014) refers to such therapeutic approaches as *“based on the assumption that, perhaps with the expert help of a therapist, a person is able to change the way*

*they think about the world through sheer force of will, rather than attempt to change the world that causes them distress.” (p.19)*

Further, the idea of mentalising is used a lot in attachment and parent child relationship literature, with higher abilities said to be associated with better parenting capacity (Fonagy & Luyten, 2018). Mentalising, mind-mindedness and reflective function are all used as proxies for parenting capacity with the research mainly focussing on mothers.

There is also an association with the discourse of lack of insight that is used for those with psychiatric diagnoses, particularly psychosis; a denial of their symptoms is taken to be evidence for their illness (David, 1990). It is then used to justify oppressive practices such as detention under the Mental Health Act for example and outcomes of mental capacity assessments (Furgalska, 2023). Based on interviews with psychiatric survivors, Furgalska (2023) shows how the poorly defined ‘lack of insight’ discourse plays a disproportionate role in propagating harm to mental health service users by being used in legal proceedings to justify coercive practice. One of the psychiatric survivors is quoted:

*“They want you to say, “I’m mentally ill, that was a hallucination and oh I suddenly realised that was a delusion, I’ve been mentally ill, and I have to take medication.” They have a very fixed definition of what insight is and insight is agreeing with them, with their belief systems.’ ” (p.8)*

### Action orientation

In the example above of the mother who is berated for not accepting her difficult childhood, the notion of insight is weaponised and used to blame the mother for having a difficult childhood, not accepting it, and in doing so inflicting the same on her child. The mother’s lack of insight bridges the gap between her vulnerability and her responsibility as a mother to her own child. The inevitability of the child’s experience due to the mother’s lack of insight is presented as a *fait accompli* and thus makes removal appear like the only reasonable option.

## Positionings

Like the mental health and personality discourses, lacking insight and intelligence may serve to position mothers as less credible and rational, particularly in comparison to the professionals. Indeed, the psychologist in judgment 77 is described by the judge as being insightful, which is interesting language given the theme of the mother's lack of insight in the same judgment:

*"I found [the psychologist]'s reports to be extremely useful and insightful when reaching my decision in respect of Z's future" (p.12)*

Similarly to the way that the emotionally unstable personality traits position mothers in contrast to rational professionals, discursive constructions of mothers lacking insight or intelligence may also entrench the positioning of professionals as more evidence based or believable.

The charge of lacking insight or intelligence may also further a subject position of a mother whose words are not to be believed, drawing again on ideas of epistemic injustice (Fricker, 2010)

## **6. Therapy and support**

### Discursive constructions

Therapy appears in all five judgments in different forms and guises. It is the principal intervention suggested for how a mother's trauma/mental health/personality issues might be addressed. The metaphor of therapy as a journey is drawn upon heavily across the judgments, with the time element of it being crucial in assessing whether a mother has done enough to keep her child within the timeframes that the court calls for based on the child's needs. This is shown in the extract below:

*" [the mother] needs to have therapy that will help her process and recover from the losses she has suffered. There is a good chance she will benefit from treatment. She has experienced some positive change through her work with [therapist] and this has motivated [her] to get more help. She is very good at*

*recognising and explaining her feelings. But it will likely take a long time and will be a hard journey. It is very likely that [the mother] will continue to struggle with her mental health while she is on this journey” (Judgment 106, p2)*

The idea of therapy as a journey is echoed in other judgments:

*“[the mother]’s evidence in this final hearing about why she hasn’t sought the required therapy after leaving [residential unit] was a little hard to follow... In any event, it means she hasn’t even begun the journey that she needs to undertake to address her issues”. (Judgment 135, p24)*

In judgment 135 “lack of therapy” is listed in the risks posed to the child by the mother, giving it a significant amount of weight. (p13)

But as well as therapy being positioned as the answer, in other parts of the judgments it is described as a risky process which could stir things up and cause further mental health problems and therefore risks to the child:

*“However, it would be a concern for the work to commence in the community whilst caring for [the Child] as there would be a risk of emotional harm to him as the mother was seeking to engage with the stress of the therapy.” (Judgment 146, p.4)*

The idea of therapy as hard work or stressful is repeated across other judgments:

*“The really tough aspects of the therapeutic process have not yet begun”*

Therapy is also presented as a project that a mother needs to engage with successfully and which will equip her with skills:

*“There is a need for evidence of a sustained period of the Mother successfully applying the skills and strategies learnt and evidencing settle mental health” (Judgment 146, p.20)*

In Judgment 77 therapy is said not to be appropriate because the mother is considered 'beyond help' given her life circumstances:

*"[the psychologist] did not recommend intervention or support for the mother as it is unlikely to be successful until such a time the mother was able to disentangle herself from her own mother and her wider network" (p.77)*

The notion of therapy being 'successful' or not is repeated.

When other forms of support are mentioned, i.e. more practical such as support workers going in to support mothers, or a residential unit, mothers are seen as being over reliant on them and that they should be able to manage without them:

In judgment 135, the mother is praised for being a good mother at points but it is quickly qualified by the fact that she can only manage this in the context of getting a lot of support from paid support workers. It is felt that she can't do it alone. A similar notion is repeated in judgment 146 where the independent social worker is quoted as saying:

*"The mother's mental health has been seen to improve in a nurturing environment [referring to assessment unit] But it has also been seen to rapidly deteriorate when the mother was subject to a more independent environment" (p. 11)*

There are two examples where the material and specific barriers to mothers accessing support are discussed.

In Judgment 106, the mother is unable to attend a domestic abuse recovery course because of the distance from her home and the lack of childcare. In Judgment 135 the mother says that she wanted to work with a specific recovery worker that she had worked with before, which is dismissed by the judge as unreasonable. However, given parents' histories it is often hard for them to build trust with professionals (Webb, 2021)

## Discourses

There is a strong overarching psychological discourse whereby therapy is seen as the principal mechanism for psychological change, as expounded by media and in public discourse. The language of 'needing' therapy in order to process life events shows the weight given to it as an intervention. It also evokes a professional discourse whereby a professional (therapist) is responsible for helping or supporting a person to change as opposed to the person using their own resources or support systems. The idea of therapy as challenging and something to succeed at also brings in a neoliberal discourse. One's sanity and emotional health are one's own responsibility in the same way that individuals are responsible for other aspects of life such economic productivity and parenting. Further, the dismissal of practical support and the view that mothers must cope without any, is also a neoliberal discourse and draws on ideas of intensive parenting (Lee et al., 2014).

## Action orientation

By citing lack of therapy as a key deficit in a mother's readiness for parenting, judges are able to give a clear and tangible reason why a mother is unfit to care for her child. Even if they have done some it is not enough, and it might cause more harm than good. The notion of the journey and things taking time also fits with the idea of timeliness and children's lives not being delayed. As we know from the report by Pause (2022), many mothers have not been able to access the recommended therapy, or are required to pay substantial amounts of money if they are not able to access it on the NHS.

Another double (or triple?) bind is presented: a mother is berated if she has not had therapy; if she has had it she has not had the right kind; if she has had the right kind it might yet stir up difficult emotions which would then put the child at risk.

Furthermore, support is only valued if a mother can manage without it, as seen in the case of the practical support outlined. A lack of material and practical support also acts as a barrier to mothers being able to access the recommended therapy such as the mother who could not attend the domestic abuse course due to childcare difficulties. The material barriers to accessing therapy are echoed in the report by Pause (2022)

## Positioning

Mothers are positioned as passive recipients in need of help as well as active agents who must work hard to succeed at their own emotional recovery. Again the victim/perpetrator dynamic can be seen here.

The neoliberal discourse implies a responsibility on mothers to have had the therapy, even when it is known that many mothers are unable to access the recommended treatment on the NHS and cannot afford to pay for private therapy (Pause, 2022). If they really cared about their child, it might be argued, they would do all they can to get the recommended treatment. This obfuscates the many and varied systemic and material barriers, as well as the fact that some may view therapy as another form of intrusion or judgment. Therapists are rarely spoken about but there is an assumption that all therapy is 'good' and thus that all therapists might be too.

## **7. Fathers**

### Discursive constructions

Fathers are involved in all five judgments, to varying degrees. The descriptions of fathers are notable both for what they say and don't say, and how this sets up a contrast with descriptions of mothers.

In Judgment 106, the father is given the name 'Mr X' whilst the mother is given a pseudonym (Amy). This may point to the relative invisibility and non-specificity that is applied to fathers, in opposition to the detailed character examinations of mothers. It may also speak to them being seen as dangerous.

References to Mr X are few and far between. However, it is noted that he has a child from another relationship who was also subject to care proceedings. It is also stated that he did not take up the offer of contact with Tilly and "has not engaged with the local authority since then". This is a common refrain for fathers, for example in Judgment 77, the father is accused of "sporadic engagement" and not attending contact.



Even though their actions are often presented as risky, this is referred to more often in terms of mother's decision to be in a relationship with them, rather than their actions per se. As shown in the following quote:

*“The mother’s relationship with [the father], was unhealthy and abusive. [the father] assaulted the mother on [x] September 2020, for which he received an 18 month suspended sentence. Notwithstanding this, the mother remained in a relationship with him and became pregnant with [the child]. She again conceived a child with [the father] in/around August 2022 despite the risks that this relationship present to her and [the child]” (106, p3)*

It is notable that the paragraph begins and ends with the mother's actions, though the substantive risk relates to the father.

In Judgment 152, the only judgment where a parenting assessment of the father is reported, the father had been taking care of the child after he was removed from his mother's care; the father was then found driving on the wrong side of the road under the influence of cannabis with the child in his care, leading to the child being taken in to foster care. The father does not attend the proceedings and does not give evidence. He decided not to put himself forward for the sole care of child. The parenting assessments that are reported are mainly positive, however they were done before the drug driving incidents. The tone of the language used to describe the father (Jack) is notably less emotive, as compared to that used to describe the mother (Jane). This may be exemplified by the difference in length, language, and verbosity in the list of concerns relating to the parents in the following extract:

*“a. Jane had significant social care involvement as a child being removed from her mother’s care in [a date], experiencing placement moves and suffering significant abuse and neglect.*

*b. Jane has a history of very poor mental health which has included her being hospitalised on several occasions due to being unable to keep herself safe. Jane is diagnosed with Generalised Anxiety Disorder and Emotionally Unstable Personality Disorder. Jane has a significant history of self-harm and has made a number of deliberate attempts to end her life.*

*c. Jane has complex needs relating to her learning. She is diagnosed with Autistic Spectrum Disorder, ADHD, Irlen's syndrome, and OCD as well as being very sensitive to noise.*

*d. Jane has been in relationships where she has been the victim of domestic abuse.*

*e. Jane has had an inability to regulate her emotions leading to violence and aggression namely; i. In [a date] Jane was convicted of causing grievous bodily harm after stabbing her ex-partner in the abdomen with a knife. ii. In March [a date] Jane killed a cat by suffocating it.*

*f. There is a history of domestic abuse in Jack's significant relationships*

*g. Jack has struggled with his mental health and previously expressed suicidal ideations.*

*h. Jack has a long-standing history of substance and alcohol misuse.*

*i. Jack has 17 convictions for 28 offences including matters relating to drugs, dishonesty, and failing to comply with court orders."*

(Judgment 152, pp. 8-9)

As well as the general tone and language being in contrast for mother and father, there are instances of difference for example the mother's mental health being described as very poor as opposed to the father 'struggling' with his mental health- eliciting a more sympathetic response. Also, there is a mention of the mother's victimhood but no explicit mention of the father's perpetration of domestic abuse. Another difference may be noted in the reporting of their criminal histories; the mother's emotion regulation is cited as a cause for her violence whereas the cause for the father's offences not. It is also noted elsewhere in the judgment that the mother felt the social worker favoured the father over her, which is vehemently denied by the social worker (p34).

A notable exception to the portrayal of fathers as rational yet absent subjects is in judgment 135 where the father is described as having a diagnosis of paranoid schizophrenia. He is presented as irrational, with the adjectives "*paranoid*" (p.19) and "*absurd*" (p.26) used in relation to him. It may be here that the mental illness discourse takes precedence due to the power of the 'paranoid schizophrenic' label.

### Discourses

The absent father discourse is evident through the lack of involvement of fathers in proceedings, as well as their reported non-engagement with professionals.

The inclusion of mothers' decisions to stay in relationships draws on discourses of victim blaming whereby women are held responsible for abuse they have suffered particularly if they are mothers. This links with failure to protect discourses where mothers are often held responsible for abuse perpetrated by others, often men (Azzopardi, 2022)

### Action Orientation

Rather than elicit sympathy for the mother who may have been a victim of abuse, the inclusion of the father's abuse or criminal actions are used as further evidence of the mother's deficits because she has chosen to be with someone like this even if the relationship is over.

### Positionings

The lack of detail and information about fathers throughout the judgments functions in stark contrast to the detail of mothers whose characters and personalities are excavated and are often presented as irrational or unstable. Whilst the father might be a risk, he is presented as rational and uncomplicated.

There are some practical reasons for there being less detailed assessment of fathers; as stated above, they are often written off as risky. When a father does not put himself forward to care for a child, he is not required to undergo a parenting assessment therefore the same level of scrutiny as the mother. This points to the material-discursive link, whereby given the majority of childcare is left to mothers and fathers are more likely to be absent, mothers are subject to greater scrutiny.

As cultural critic Rebecca Solnit writes:

*"A mother may be treated like a criminal for leaving her child alone for five minutes, even if that child's father has left it alone for several years." (2017, p.5)*

## Practice

### What are the possibilities for action as a result of the discursive constructions?

Judges and professionals are able to comment on a mother's internal state, drawing on psychological discourse. For example, as therapy is such an overarching societal discourse, judges and other professionals can comment on mothers needing therapy in a way that was in the past perhaps more the domain of a psychological professional. This accords with the 'psychologization' of everyday life (Rose, 1998). Within the therapy discourse, there is little else that can be thought about beyond the mother's internal world as a site for change; material reality is secondary to a mother's psychology and the two are not seen to be linked.

What can be done by a mother who is given the label of emotionally unstable as opposed to a professional, particularly one with a doctor title who is praised for their rationality? As evidenced by the inclusion of two of the mother's disagreement with the psychologist's assessment, it appears that very little can be done from their position. It may even be that in seeking to dispute the evidence, the very personality traits with which they are labelled get reconfirmed in a cruel double bind (Bateson et al., 1956)

The positions of the mothers as irrational actors, acting out of step with the best interests of their child because of ingrained character traits, also adds to the legal reasoning around their incapacity to parent. The judge's preference for the evidence of professionals over that of mothers is also made visible through their difference in credibility.

Statements about unstable personality traits, mental health, and intelligence, are quite damning and potentially leave mothers with little room for manoeuvre. Again, a double bind is presented; how might a mother argue with a statement about her inner world without being again accused of the same charge; with great difficulty it would seem.

As a result of a mother being given the label of having poor mental health or a psychiatric diagnosis, this may limit the credibility of what she says in an example of epistemic injustice (Fricker, 2010).

The discourse of the absent, risky, father arguably lets men off the hook and adds further weight to the role of the mother as sole parent. This leads to further and more examination of the mother's capacity. It also absolves professionals of responsibility to try to engage with men who are perceived (often justifiably so) as dangerous. This may then perpetuate the gendered division of parenting roles.

## **Subjectivity**

### What can be felt, thought and experienced from within the subject positions?

As outlined by Willig (2013) this is the most speculative stage as it is impossible to know what might be felt, thought or experienced. This is particularly the case here because although there are many accounts of what might be the mothers' subjective experience through the use of psychological language, their actual experience is very hard to find apart from in judgment 106 where longer quotes from the mother are included.

The inclusion of the two mothers' dispute of the psychological evidence is interesting as it points to their subjectivity; they may have felt misunderstood, aggrieved, or wrongly labelled. Beyond this it is hard to know how mothers might feel, though the Pause research (2022) and the recent report about parents' experiences of care proceedings (Hunter et al., 2024) both give some sense of the feelings that mothers may be experiencing. For example, fear, confusion, shame, feeling like a bystander.

One might expect that for mothers who are subject to proceedings, feelings of guilt and shame may be elicited by the use of victim blaming for domestic abuse, and allusions to parenting capacity that draw on good mother discourses.

Professionals are positioned as devoid of feelings, apart from the notable exception of the social worker who is described as displaying frustration. This may be indicative of the feelings of other professionals, particularly if they consider that the mother is actively doing things that to them seem irrational and to cause harm to themselves or their children. There may also be a sense of hopelessness or resignation on the part

of the judge or other professionals who see the mother's actions as indicative of her personality. There may also be feelings of pity or sympathy for mothers, which comes across in some of the tone of the language.

Fathers may feel side-lined, ignored, and written off. Mothers might feel aggrieved that the father is the one who presents the risk yet he receives far less scrutiny. Professionals may feel frustrated with mothers (as outlined earlier on) for their perceived poor decisions to have relationships with these men.

## **CONCLUSION**

In this thesis I set out to address the following research question: What role does psychology- both as a profession and a discourse- play in the assessment of mothers in family court proceedings?

I did so based on a feminist epistemology and using discourse analysis of family court judgments. This resulted in five judgments which looked at in depth after a process of exclusion.

## **Key Findings**

In the five judgments that I looked at:

- Discourses of 'mental health', 'personality', 'lack of insight' and 'trauma' were heavily drawn upon by judges, social workers and psychologists.
- Mothers' own life histories, including experience of abuse and the care system, were often used as reasons for concern about their parenting capacity, drawing on discourses of intergenerational transmission of trauma and attachment.
- Discourses of mental health were rarely expanded upon to describe how and why they presented a risk to the child.
- Mothers' personalities were commented on explicitly in the form of their scores on personality tests conducted by psychologists, diagnoses of

emotionally unstable personality disorder, and implicitly by references to mothers' resistance to working with professionals and other behaviours.

- Professionals were described as rational, helpful, and their evidence was accepted as correct and insightful.
- Psychologists' evidence was accepted as correct and held with high esteem, despite including personality testing and attachment measures which could be used with a general population and arguably added little qualitative information.
- Fathers were dismissed as 'risky' due to their criminal histories, but their personality and character was not subject to the same scrutiny as mothers'.
- Mothers were often blamed for their 'choices' in relationships and being the victim of domestic abuse, including one reference to a mother's personality traits as the reasons for her likely victimhood.
- The contrast between the subject positions of mothers as opposed to fathers and professionals contributed to mothers' positions being silenced in a process of epistemic injustice.
- Therapy was recommended as the main solution for mothers, but the length of time taken for therapy to 'work' was outside of the child's timescales in the judgments examined.
- Practical support was not seen as an appropriate form of support, and mothers were criticised for benefiting from support as it showed that they could not manage without it.
- Relational patterns, such as how professionals responded to mothers, were not explored, and the focus was on the mothers' internal world and psychology.
- Some compassion was shown to mothers around their experiences as victims, but this was often followed by a renouncement of their actions in not overcoming their victim status and in doing so becoming perpetrators towards their own child.

## Contribution to Literature

In the five judgments that I looked at, psychology and psychological discourse appeared to play a significant role in the assessment of mothers and- it might be assumed- consequently in the decision to remove the child. All five judgments shared some similar characteristics in that they concerned babies or very young children, the mother often had a social care history, and it was the mother putting herself forward as sole carer. This study therefore may contribute to the knowledge base around new-born babies in care proceedings, as well as mothers who are involved in recurrent proceedings (Broadhurst et al., 2018; Ryan, 2021). It is consistent with the existing literature about the life experiences of mothers in these proceedings and adds a richness to the data by detailing the appeals to psychological discourse in these cases, as well as the ways that these life experiences might be used against women. This finding is also consistent with the recent report where parents who had been involved in family court proceedings were interviewed, and one of the themes was around feeling that their own difficult experiences were used against them (Hunter et al., 2024).

The mothers' own psychologies were examined in detail as they may be taken as a proxy for the child's wellbeing. This draws heavily on parenting discourses and attachment theory and shows how psychological discourse plays a key role in assessment of parenting (Faircloth, 2023; Lee et al., 2014).

This thesis also builds on a report by the organisation Pause (2022) about mothers' experiences of psychological assessments as part of court proceedings. In the report, the barriers to accessing recommended therapy are described. There is also reference in the report to the lack of explanation about the process of psychological assessments and an allusion to the power imbalance between psychologists and mothers. In the judgments analysed for this study, the theme of therapy was a strong one with nearly all the mothers being told they needed to do it. In the judgments looked at for this study, therapy acted as a double bind; mothers who had started therapy were praised, but they were also told that they have not done enough or the appropriate type of therapy. Therapy was seen as the answer to the mothers' problems, but it was also considered to be risky in terms of causing further mental



health problems and a long journey which cannot be completed in a child's timescales.

Themes of power and who can say what were also highly evident from the judgments I examined (Foucault, 1995). Psychologists' words were given significant weight, as were other professionals with the judges' positive comments on their expertise and rationality. In contrast, mothers were presented as emotionally unstable and irrational, either through mental health diagnosis or references to their personality (Ussher, 2013). This difference in description of professionals and mothers increased the likelihood of testimonial injustice whereby a person's account is seen as more or less credible depending on their credentials (Fricker, 2010). This is a dynamic that has been observed by Boogardt (2022) with children in family court proceedings. This study therefore adds to the literature by showing how the same process may occur with parents and is bolstered by the use of psychology.

In terms of discourse analysis, this thesis added to the feminist discourse analytic evidence base, building on feminist DA and FDA studies (Alldred & Burman, 2005; Harper et al., 2021).

### **Strengths And Limitations**

This study brought together many strands of academic and real-world literature pertaining to social work, law, psychology, feminism and sociology. This allowed a social issue that is not normally looked at from a critical or psychological lens to be analysed thus. It also added to the literature by offering a different methodology from the majority of the literature in the arena of family courts which is either large scale statistical analysis or first-hand qualitative accounts. By interrogating the practices of court professionals, this may add a helpful triangulation.

Evaluating the quality of qualitative research is more complex than evaluating quantitative research, as is discussed by Spencer and Ritchie (2011). However, the authors do give some criteria by which it can be useful to evaluate a qualitative study. The three key areas they talk about are contribution (to research, practice,

theory), credibility and rigour. With regards to contribution, this study set out to contribute to the literature regarding family courts but from a different lens, which I believe it has achieved. The credibility of the study is bolstered by the inclusion of raw data and Appendices B, C and D which show how I arrived at my analysis based on a process of narrative reading and funnelling. In terms of rigour, I have tried to be explicit about my own biases and interpretations, as well as process, in line with the discussion around objectivity in the methodology section. I have also provided rationale for why DA was an appropriate methodology.

Reflecting on the feminist epistemology and reflexivity, I was not able to bring as much myself as I would have liked to the research process, which was likely impacted by working mainly individually and not as part of a research team. This might have supported me to bring greater reflexivity to the thesis, by showing my blind spots and hearing others' views. Given the richness of the data, it also was not possible to examine in detail all the ways that psychology played a role and there may be aspects of the data that were missed which related to psychology and psychological discourse, due to the focus being on the assessment of mothers.

### **Recommendations for Future Research**

It would have been interesting to include a broader view of the use of psychology for example when thinking about child development and attachment. This is something that might be examined in future research. A genealogical approach, looking at the history of the use of psychology in judgments would also be of interest (Barnett, 2020). This may tell us about the changing discourses around trauma or diagnosis for example, as my instinct would be that discourses of trauma and intergenerational trauma are playing more of a discursive role now than ten years ago. Whilst this might appear to be a positive, less victim blaming discourse, in actuality as outlined it may serve a similar function to position women as broken or beyond help (Tseris, 2013).

The differing role of psychology in different types of proceedings, for example those with older children or where both parents are putting themselves forward, could be

an area for future research. A comparative study might examine the differences between the use of psychology in different types of proceedings. A hypothesis that emerged from this study is that psychology may be more heavily drawn upon in the assessment of mothers when the proceedings involve younger children or babies. Of course, this would not be a quantitative inference based on a traditional positivist analysis. However, this would make intuitive sense perhaps given that with older children, there is often more factual evidence of events that led to proceedings. With new-born babies, the mother's history and own personhood is the factual evidence and thus the subject of scrutiny. Thus, future research may do well to test this hypothesis.

This study also focused on public law proceedings. This is partly because more has been done around the use of psychology in private law, specifically with the use of parental alienation (Barnett, 2020). I also was interested in the most marginalised in society, who are often those families who come into public law proceedings. Future research might examine a similar question looking at private law proceedings to look for any differences or similarities.

### **Contribution to Debate**

The findings of this thesis challenge the idea espoused by various professional bodies and media in response to controversy around psychologists in Family courts that what is needed is greater regulation i.e. that all psychologists providing reports must be accredited with certain accrediting bodies. My view based on the research I have carried out is that:

- Psychology is not just the purview of psychologists, and its use must be examined beyond those with the label.
- Regulation does not guarantee practice which takes in to account potential harm and power dynamics.

In the judgments that I looked at I cannot say that psychological expertise appeared to add much of an understanding of the mothers beyond reproducing misogynistic and victim blaming discourses. Whilst the judgments I examined did not share the

full content of the psychological assessments, what they referenced of them may be telling of what is seen as important. Diagnoses and categorisations are often the most compelling and easy to employ. I can attest to this from my experience as a social worker citing a psychologist's personality assessment. Psychologists' skills lie in formulation. Psychologists should not heed to calls for diagnosis or personality testing where it is not appropriate, even if this is what instructed by lawyers. The example shared in the Introduction where the psychologist was praised for bringing a systemic analysis to the assessment of a case shows that there is appetite from the Family courts for more thoughtful and systemic ways of thinking ([2021] EWHC 2844).

Of course, there are many systemic issues which prevent high quality ethically minded psychologists from acting as expert witnesses in the Family courts, as outlined by Boogardt (2022). A more radical view might be to dispense with the need for psychologists altogether, or at least to question it as a taken for granted practice. Future practice-based research might do this by interviewing or surveying judges, lawyers, professionals, and mothers to understand what they perceive to be the value of psychological expertise in care proceedings, as well as the potential harms. Examples of good practice would be helpful to see and might better elucidate if and how psychological expertise could play a generative role in proceedings.

## **Recommendations For Practice**

### Early intervention and prevention

Whilst this study has focussed on the final point of the trajectory of a family being separated, as outlined in the literature review there are many and varied societal and systemic issues which lead to certain families being more likely to end up in these situations. Therefore, a preventive approach which addresses social inequalities may serve to reduce the number of families finding themselves at such points (Bywaters et al., 2018). With regards to mothers in particular, greater practical and emotional support in pregnancy and the early postnatal period could also significantly impact their ability to keep their child with them.

Once mothers have entered the court arena, there are alternative approaches to assessment which are more holistic and potentially less blaming. The Family Drug and Alcohol Court (FDAC) is one such intervention which has been shown to increase the likelihood of reunification and be experienced as a fairer process than traditional court proceedings (FDAC, 2019). Greater funding for these alternative approaches may improve both experiences and outcomes.

### Training for professionals

Based on the five court judgments examined for this study, it is recommended that the key professions involved in court proceedings (judges, lawyers, psychologists, social workers, guardians) receive training around the dangers of psychology and psychological discourse in reproducing gendered power relations as exemplified in this study.

Training for psychologists may be added to clinical psychology training courses on modules around the potential harms of clinical psychology. This is something which is provided at UEL but has more of a focus on international human rights and psychiatric inpatient setting. It is not known whether such teaching is provided on other doctoral training courses, but it is recommended that it is added if not.

Training for judges and legal professionals may include a summary of the findings of this study, as well as an overview of the theoretical basis such as the historical links between psychology and harmful social practices. This would aim to increase judges' and lawyers' confidence in challenging unethical and harmful psychological practice and avoid contributing to it.

### Guidance for professionals

Some examples of specific guidance for professionals involved in court proceedings coming from this study are listed below:

- Qualify the inclusion of concepts such as 'intergenerational trauma', 'mental health', 'lack of insight' and 'personality issues', with actual examples of how this leads to a risk or parenting capacity deficits.

- A mother's mental health problems of poor mental health should not automatically be seen as a risk or concern. When listing it as one, be clear about the specific nature of it and why it is thought to be a risk (e.g. the mother's low mood means she is unable to provide basic care to the child)
- Avoid victim blaming language around domestic abuse, by:
  - Acknowledging the role of the perpetrator in desisting in the abuse not just the mother in making less risky decisions
  - Being clear about who the victim is and who the perpetrator is (if known)
- Consider how language around women's emotional instability and irrationality even if couched in psychological language may reproduce gender inequalities.
- Relatedly, consider how comments about professionals' conduct may set up a power imbalance.
- Acknowledge the relational nature of professionals working with mothers and seek to interrogate two-way processes such as a professional's fear or frustration with a mother.
- Consider what is necessary to include about a mother's personality or history to justify a decision, and the potential impact on the mother of doing so.

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## APPENDICES

### Appendix A

Ethics application and approval



#### **UNIVERSITY OF EAST LONDON School of Psychology**

#### **APPLICATION FOR RESEARCH ETHICS APPROVAL FOR RESEARCH INVOLVING SECONDARY ANALYSIS OF EXISTING DATA (Updated September 2022)**

**FOR BSc RESEARCH;  
MSc/MA RESEARCH;  
PROFESSIONAL DOCTORATE RESEARCH IN CLINICAL, COUNSELLING &  
EDUCATIONAL  
PSYCHOLOGY**

#### **Section 1 – Guidance on Completing the Application Form (please read carefully)**

1.1	Before completing this application, please familiarise yourself with: British Psychological Society's Ethics Guidelines for Internet-Mediated Research British Psychological Society's Code of Ethics and Conduct UEL's Code of Practice for Research Ethics UEL's Research Data Management Policy UEL's Data Backup Policy
1.2	Email your supervisor the completed application and all attachments as ONE WORD DOCUMENT. Your supervisor will look over your application and provide feedback.
1.3	When your application demonstrates a sound ethical protocol, your supervisor will submit it for review.

1.4	Your supervisor will let you know the outcome of your application. Research must <b>NOT</b> commence until your ethics application has been approved.
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## Section 2 – Your Details

2.1	<b>Your name:</b>	<b>Annie Raff</b>
2.2	<b>Your supervisor’s name:</b>	<b>Lorna Farquharson</b>
2.3	<b>Name(s) of additional UEL supervisors:</b>	<b>Matthew Boardman</b>
		3rd supervisor (if applicable)
2.4	<b>Title of your programme:</b>	<b>Doctorate in Clinical Psychology</b>
2.5	<b>UEL assignment submission date:</b>	<b>25/05/2024</b>
		Re-sit date (if applicable)

## Section 3 – Project Details

Please give as much detail as necessary for a reviewer to be able to fully understand the nature and purpose of your research.

3.1	<b>Study title:</b> <u>Please note -</u> If your study requires registration, the title inserted here must be <u>the same</u> as that on PhD Manager.	<b>Motherhood on trial: women, psychology, and the family courts</b>	
3.2	<b>Research question(s):</b>	<b>What are the discourses about motherhood and mental illness in family court judgments? How does psychology contribute to these?</b>	
3.3	<b>What data are you analysing?</b>	<b>Family court judgments published online</b>	
3.4	<b>Who owns the original data (i.e., copyright holder)?</b>	<b>Crown copyright</b>	
3.5	<b>Who is the guardian of the data (if different to the original owner)?</b>	<b>National Archives</b>	
3.6	<b>Is the data in the public domain?</b> Please note - For the purposes of this application, the ‘public domain’ means the data are freely available for anyone to access without restriction. Do bear in mind that even if data are available through publicly-available platforms (e.g., websites), the data are not necessarily in the public domain (e.g., in the case of a closed or private forum on a website).	<b>YES</b> <input checked="" type="checkbox"/>	<b>NO</b> <input type="checkbox"/>
		If yes, go to section 5	
		If no, go to section 4	
		If you selected yes, please complete section 5	
		If you selected no, please complete section 4	

## Section 4 – Data not in the Public Domain

It is vital that data are handled carefully, particularly details about participants. For information in this area, please see the UEL guidance on data protection, and also the UK government guide to data protection regulations. For analysis of data not in the public domain, please confirm the following:

4.1	<b>You have full and appropriate permission from the guardian of the data you intend to use and/or the owner of the data (copyright holder):</b>	<b>YES</b> <input type="checkbox"/>
	Have you included evidence of this permission:	<b>YES</b> <input type="checkbox"/>
4.2	<b>You will comply with any regulations of use that the guardian and owner of the data stipulate:</b>	<b>YES</b> <input type="checkbox"/>
4.3	<b>For datasets involving research participants, the guardian or owner of the dataset has confirmed that participant consent was gained as part of the initial data collection:</b>	<b>YES</b> <input type="checkbox"/>
4.4	<b>For datasets involving research participants, the guardian or owner of the dataset has confirmed that participants agreed that their data can be used in future research by other researchers:</b>	<b>YES</b> <input type="checkbox"/>
4.5	<b>For datasets involving research participants, the data you intend to use has been properly anonymised:</b>	<b>YES</b> <input type="checkbox"/>
4.6	<b>So as not to infringe copyright, the data source and the guardian and owner (copyright holder) of the data will be acknowledged in your research:</b>	<b>YES</b> <input type="checkbox"/>
4.7	<b>You will not pass on the data to other people or groups:</b>	<b>YES</b> <input type="checkbox"/>
4.8	<b>Describe how you plan to obtain the data (e.g., who from, and in what way):</b>	Please describe how you will obtain the data
4.9	<b>Outline how will you ensure data will be securely stored:</b>	Please outline how data will be securely stored
4.10	<b>Detail who will have access to the data:</b>	Please detail who will have access to the data



4.11	<b>How long will the data be retained for:</b>	Please insert how long data will be retained for
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### Section 5 – Data in the Public Domain

Even if the data is in the public domain (e.g., comments on publicly-accessible internet forums), there are still some ethical considerations, including:

5.1	<b>How will data be collected (including details of any software used)?</b>	<b>It will be downloaded from the website on to the researcher’s personal computer</b>	
5.2	<b>Will data be collected in an unobtrusive manner (i.e., no contact made with the originator, copyright holder, guardian or owner of the data)?</b>	<b>YES</b> <input checked="" type="checkbox"/>	<b>NO</b> <input type="checkbox"/>
	If no, please give details of how you will make contact with the relevant person (i.e., the originator, copyright holder, guardian or owner of the data), and the specific details of the communication you intend to make (e.g., the text of the email or letter you intend to write).	Please insert all relevant steps	
5.3	<b>Will data be collected with the author’s consent?</b>	<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input checked="" type="checkbox"/>
	If not, please give an appropriate reason or justification:	<b>Not necessary as in public domain</b>	
5.4	<b>Are the personal details of individuals or groups identifiable in the data?</b>	<b>YES</b> <input checked="" type="checkbox"/>	<b>NO</b> <input type="checkbox"/>
	If yes, what steps will you take to ensure their anonymity?	<b>The names of the judges and legal representatives are published however these will not be included in the research, also dates and any possible identifying information of families will not be included</b>	
5.5	<b>Are individuals or groups liable to be adversely affected by the data being analysed and disseminated (e.g., damage to their reputation)?</b>	<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input checked="" type="checkbox"/>
	If yes, what steps will you take to minimise these adverse effects:		



If these adverse effects will not be minimised, please give an appropriate justification:	Please provide a justification
---	--------------------------------

**Section 6 – Declarations**

6.1	<b>Declaration by student. I confirm that I have discussed the ethics and feasibility of this research proposal with my supervisor:</b>	<b>YES</b> <input checked="" type="checkbox"/>
6.2	<b>Student's name:</b> (Typed name acts as a signature)	<b>Annie Raff</b>
6.3	<b>Student's number:</b>	<b>2195626</b>
6.4	<b>Date:</b>	<b>17/07/2023</b>

***Supervisor's declaration of support is given upon their electronic submission of the application***

**School of Psychology Ethics Committee**

**NOTICE OF ETHICS REVIEW DECISION LETTER**

**For research involving human participants**

BSc/MSc/MA/Professional Doctorates in Clinical, Counselling and Educational Psychology

**Reviewer:** Please complete sections in **blue** | **Student:** Please complete/read sections in **orange**

## Details

<b>Reviewer:</b>	<b>Claire Marshall</b>
<b>Supervisor:</b>	<b>Lorna Farquharson</b>
<b>Student:</b>	<b>Annie Raff</b>
<b>Course:</b>	<b>Prof Doc in Clinical Psychology</b>
<b>Title of proposed study:</b>	<b>Motherhood on trial: women, psychology, and the family courts - APPLICATION FOR RESEARCH ETHICS APPROVAL FOR RESEARCH INVOLVING SECONDARY ANALYSIS OF EXISTING DATA</b>

## Checklist

(Optional)

	<b>YES</b>	<b>NO</b>	<b>N/A</b>
Concerns regarding study aims (e.g., ethically/morally questionable, unsuitable topic area for level of study, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Detailed account of participants, including inclusion and exclusion criteria	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Concerns regarding participants/target sample	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Detailed account of recruitment strategy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Concerns regarding recruitment strategy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
All relevant study materials attached (e.g., freely available questionnaires, interview schedules, tests, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Study materials (e.g., questionnaires, tests, etc.) are appropriate for target sample	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Clear and detailed outline of data collection	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Data collection appropriate for target sample	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If deception being used, rationale provided, and appropriate steps followed to communicate study aims at a later point	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If data collection is not anonymous, appropriate steps taken at later stages to ensure participant anonymity (e.g., data analysis, dissemination, etc.) – anonymisation, pseudonymisation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Concerns regarding data storage (e.g., location, type of data, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Concerns regarding data sharing (e.g., who will have access and how)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Concerns regarding data retention (e.g., unspecified length of time, unclear why data will be retained/who will have access/where stored)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If required, General Risk Assessment form attached	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Any physical/psychological risks/burdens to participants have been sufficiently considered and appropriate attempts will be made to minimise	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Any physical/psychological risks to the researcher have been sufficiently considered and appropriate attempts will be made to minimise	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If required, Country-Specific Risk Assessment form attached	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If required, a DBS or equivalent certificate number/information provided	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If required, permissions from recruiting organisations attached (e.g., school, charity organisation, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
All relevant information included in the participant information sheet (PIS)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Information in the PIS is study specific	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Language used in the PIS is appropriate for the target audience	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
All issues specific to the study are covered in the consent form	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Language used in the consent form is appropriate for the target audience	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
All necessary information included in the participant debrief sheet	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Language used in the debrief sheet is appropriate for the target audience	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Study advertisement included	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Content of study advertisement is appropriate (e.g., researcher's personal contact details are not shared, appropriate language/visual material used, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## Decision options

<b>APPROVED</b>	Ethics approval for the above-named research study has been granted from the date of approval (see end of this notice), to the date it is submitted for assessment.
<b>APPROVED - BUT MINOR AMENDMENTS ARE REQUIRED BEFORE THE RESEARCH COMMENCES</b>	<p>In this circumstance, the student must confirm with their supervisor that all minor amendments have been made <b>before</b> the research commences. Students are to do this by filling in the confirmation box at the end of this form once all amendments have been attended to and emailing a copy of this decision notice to the supervisor. The supervisor will then forward the student's confirmation to the School for its records.</p> <p><b>Minor amendments guidance:</b> typically involve clarifying/amending information presented to participants (e.g., in the PIS, instructions), further detailing of how data will be securely handled/stored, and/or ensuring consistency in information presented across materials.</p>
<b>NOT APPROVED - MAJOR AMENDMENTS AND RE-SUBMISSION REQUIRED</b>	<p>In this circumstance, a revised ethics application <b>must</b> be submitted and approved <b>before</b> any research takes place. The revised application will be reviewed by the same reviewer. If in doubt, students should ask their supervisor for support in revising their ethics application.</p> <p><b>Major amendments guidance:</b> typically insufficient information has been provided, insufficient consideration given to several key aspects, there are serious concerns regarding any aspect of the project, and/or serious concerns in the candidate's ability to ethically, safely and sensitively execute the study.</p>

## Decision on the above-named proposed research study

Please indicate the decision:	<b>APPROVED</b>
-------------------------------	-----------------

## Minor amendments

Please clearly detail the amendments the student is required to make

n/a

## Major amendments

Please clearly detail the amendments the student is required to make

n/a

## Assessment of risk to researcher

Has an adequate risk assessment been offered in the application form?	YES	NO
	<input type="checkbox"/>	<input checked="" type="checkbox"/>
If no, please request resubmission with an <u>adequate risk assessment</u> .		

If the proposed research could expose the researcher to any kind of emotional, physical or health and safety hazard, please rate the degree of risk:

<b>HIGH</b>	Please <b>do not approve a high-risk</b> application. Travel to countries/provinces/areas deemed to be high risk should not be permitted and an application not be approved on this basis. If unsure, please refer to the Chair of Ethics.	<input type="checkbox"/>
-------------	--	--------------------------

<b>MEDIUM</b>	Approve but include appropriate recommendations in the below box.	<input type="checkbox"/>
<b>LOW</b>	Approve and if necessary, include any recommendations in the below box.	<input checked="" type="checkbox"/>
<b>Reviewer recommendations in relation to risk (if any):</b>	Please insert any recommendations	

## Reviewer's signature

**Reviewer:**

(Typed name to act as signature)

**Dr Claire Marshall**

**Date:**

**06/10/2023**

***This reviewer has assessed the ethics application for the named research study on behalf of the School of Psychology Ethics Committee***

### RESEARCHER PLEASE NOTE

For the researcher and participants involved in the above-named study to be covered by UEL's Insurance, prior ethics approval from the School of Psychology (acting on behalf of the UEL Ethics Committee), and confirmation from students where minor amendments were required, must be obtained before any research takes place.

For a copy of UEL's Personal Accident & Travel Insurance Policy, please see the Ethics Folder in the Psychology Noticeboard.

## Confirmation of minor amendments

(Student to complete)

**I have noted and made all the required minor amendments, as stated above, before starting my research and collecting data**

**Student name:**

(Typed name to act as signature)

Please type your full name

**Student number:**

Please type your student number

**Date:**

Click or tap to enter a date

**Please submit a copy of this decision letter to your supervisor with this box completed if minor amendments to your ethics application are required**

## Appendix B

Examples from initial and final stage of exclusion process

<a href="#">A Mother v A Father</a> Family Court[2023] EWFC 10514 Apr 2023	no		private	
<a href="#">DR v UG</a> Family Court[2023] EWFC 685 Apr 2023	no		private	
<a href="#">Lazaros Panagiotis Xanthopoulos v Alla Aleksandrovna Rakshina</a> Family Court[2023] EWFC 504 Apr 2023	no		private	
<a href="#">F v M (Appeal: Fact Finding: Domestic Abuse: Adequate Reasons)</a> Family Court[2023] EWFC 483 Apr 2023	no		private	
<a href="#">Re R</a> Family Court[2023] EWFC 1448 Aug 2023	no		not contested- in placeme	
<a href="#">B v A Local Authority &amp; Ors</a> Family Court[2023] EWFC 15421 Aug 2023	no		not care proceedings	
<a href="#">Re Z (Care Proceedings: Reopening of Fact Finding)</a> Family Court[2023] EWFC 13711 Aug 2023	no		not care proceedings	
<a href="#">SR &amp; Anor v AE</a> Family Court[2023] EWFC 12726 Jul 2023	no		not care proceedings	
<a href="#">Re M &amp; Anor (Children) (Permanent Relocation)</a> Family Court[2023] EWFC 14524 Jul 2023	no		not care proceedings	
<a href="#">Re Joshua (Care Order)</a> Family Court[2023] EWFC 1265 Jul 2023	no		not care proceedings	
<a href="#">Re P (a child) (Extended Civil Restraint Order – abusive applicant)</a> Family Court[2023] EWFC 11015 Jun 2023	no		not care proceedings	
<a href="#">Re H (A Minor) (Child Arrangements: Section 91(14) Order)</a> Family Court[2023] EWFC 8914 Apr 2023	no		not care proceedings	
<a href="#">Re A Child (SGO and Contact)</a> Family Court[2023] EWFC 1676 Oct 2023	no		not care proceedings	
<a href="#">Re GB (Part 25 Application: Parental Alienation)</a> Family Court[2023] EWFC 15030 Aug 2023	no		not care proceedings	
<a href="#">West Sussex County Council v MM &amp; Ors</a> Family Court[2023] EWFC 8813 Jun 2023	no		no order	
<a href="#">Redcar &amp; Cleveland Borough Council v AB &amp; Ors</a> Family Court[2023] EWFC 1397 Jul 2023	maybe		FI- fact	
<a href="#">Re T &amp; Anor</a> Family Court[2023] EWFC 14313 Jul 2023	no		not care proc fact finding r	
<a href="#">Pembrokeshire County Council v Sinead James &amp; Ors</a> Family Court[2021] EWFC 7113 Jul 2023	no		not care proc fact finding r	
<a href="#">Re A (A Child) (Fact-finding)</a> Family Court[2023] EWFC 10830 Jun 2023	no		not care proc fact finding	
<a href="#">London Borough of Barking and Dagenham v The Father &amp; Ors</a> Family Court[2023] EWFC 1127 Jun 2023	no		not care proc fact finding	
<a href="#">The London Borough of Havering v A Mother &amp; Others</a> Family Court[2023] EWFC 653 May 2023	no		not care proc fact finding	
<a href="#">A Local Authority v X &amp; Ors (Need for Finding of Fact Hearing)</a> Family Court[2023] EWFC 12124 Jul 2023	no		not care proc case manage	
<a href="#">A County Council v A Mother &amp; Ors</a> Family Court[2023] EWFC 12221 Jul 2023	no		not care proc case manage	

	include?	
<a href="#">Unnamed Local Authority v S &amp; Ors</a> Family Court[2023] EWFC 15514 Sep 2023	no	curosry ref to psych
<a href="#">Re A Child (Care and Placement)</a> Family Court[2023] EWFC 14630 Aug 2023	yes	
<a href="#">A Local Authority v Mother &amp; Ors</a> Family Court[2023] EWFC 17529 Aug 2023	no	3 older children, phys
<a href="#">Oxfordshire County Council v M &amp; Ors</a> Family Court[2023] EWFC 13527 Jul 2023	yes	
<a href="#">Re T (care and placement orders)</a> Family Court[2023] EWFC 10615 Jun 2023	yes	
<a href="#">The Local Authority v F &amp; Anor</a> High Court (Family Division)[2023] EWFC 1422 Jun 2023	no	physy abuse, cursorry
<a href="#">A Local Authority v Mother &amp; Ors</a> Family Court[2023] EWFC 15212 May 2023	yes	
<a href="#">A Local Authority v A Mother &amp; Ors</a> Family Court[2023] EWFC 7710 May 2023	yes	alludes to psych asses
<a href="#">Coventry City Council v A &amp; Ors</a> Family Court[2023] EWFC 5718 Apr 2023	no	not v relevant , phys i
<a href="#">G (A Child: Care Order) (Complex Developmental Needs) (No.1)</a> Family Court[2023] EWFC 1689 Oct 2023	no	little reference to psy

## Appendix C

### Example of analysis of one judgment

*EWFC 106. The case concerns a female child of one year and two months of age, who is given the pseudonym Tilly. Her mother, given the name Amy, is twenty-three. Her ethnicity is unknown but due to the pseudonyms used and lack of reference to cultural sensitivity in the adoption section, it may be assumed that she is White British. Tilly's father, given the pseudonym Mr X, is described as not taking part in the proceedings. His age and ethnicity are unknown. Amy has had a previous child, Beth (not her real name) removed from her care. The Local Authority has applied for a full care order for Tilly to be removed from Amy's care and be adopted. At the time of the hearing, Tilly had been removed from Amy's care on an interim care order due to concerns about Tilly's safety in her mother's care. According to the judge:*

*"The main risks to Tilly come from 'Amy's mental health, her difficulties in working with others, and from Amy's choices around relationships" (p1).*

*The judge grants a care order and placement order for Tilly to be adopted.*

*Already from the sentence above around the risks to Tilly, there is a lot to unpack from a feminist CDA perspective. 'Mental health' is listed as the first risk. The order is of note as it denotes the discursive importance given in the judgment to Amy's mental health as the 'problem'.*

*It is interesting that just 'mental health' is referred to; there is no qualifier such as 'poor mental health', 'mental illness' or the 'impact of mental health'. Whilst there is inevitably a brevity aspect of using the phrase 'mental health' as a possible signifier of these things, it is notable that 'mental health' itself is well understood to be a 'risk'. This relates to notions of 'mental health' when what is really being talked about is 'mental illness', a disease that may be dangerous particularly to a child.*

*A further analysis of how Amy's mental health is written about reveals a variety of discourses of mental health that are drawn on in the judgment, including a trauma discourse, a biomedical one*

*'she talked powerfully about the impact of her life experiences on her mental health and relationships with others' (p1)*

*Here the judge nods to the link between life experiences and mental health, but also interestedly couches it in the language of what Amy herself says. The judge does later in the judgment reference how experiences, including experiences of court proceedings and social work involvement, may have impacted on Amy's mental health. There is also a recognition of things being 'not her (Amy's) fault'.*

*There are also bio-medical constructs of Amy's mental health; the judge writes that she 'has a diagnosis of a recurrent depressive disorder with symptoms linked to post traumatic stress. Amy also suffers from anxiety'. These diagnoses are on the basis of two psychological assessments that have been done, including one for the previous proceedings with her first daughter. References to getting the right doctor to find medication also draw on a biomedical discourse of mental illness.*

*It could be argued that both the trauma and biomedical discourses function to keep people as 'broken'; neither are things that can be changed, though therapy and medication are commonly referred to as possible change mechanisms. Amy is not*



currently taking medication and has only just started therapy, which the judge praises but says it is early days.

This judgment is written stylistically quite different from the others; it includes a 'short judgment' at the beginning in plain English, presumably for the benefit of Amy who is described as having vulnerabilities, though a learning disability is never referred to. The tone of the whole judgment is also quite different from the others. It might be described as more humane, compassionately written. However I also had quite an aversive reaction to the way it was written, it felt patronising and possibly a bit disingenuous. A part of me feels that you should call a spade a spade, if you're going to remove someone's child don't pretend to be nice about it. But also maybe this speaks to the tone of the argument for removal; it positions Amy as a fragile, vulnerable victim. The use of the word 'sadly' is frequent, as well as other emotive language such as the judge describing Amy as suffering "devastating losses" (p1). At other points in the judgment, though, Amy is positioned as the perpetrator and Tilly the victim for example 'it is not good for Tilly to be in a place where her mother is angry and shouting. It will make Tilly frightened and feel unsafe'.

The judge writes in the first person and actively recognises their role in the decision making, saying for example 'I am sorry to be the cause of pain to Amy, who has lost so much in her life, and to Tilly'. Again this is very different from the other judgments, and nods to the judge as a subject.

The inclusion of Amy's history and relationship history is of interest and potentially builds a picture of a certain type of mother. She is described as being 'only a child when she started having adult relationships'. Whilst the judge seems to frame this in terms of vulnerability it also functions to conjure an image of a promiscuous young woman who we later find out had had three miscarriages before the age of 18 before having a baby by the brother of her boyfriend. Amy's experience of domestic abuse is, unsurprisingly, framed as a result of her unsafe choices and her prioritising her own needs above those of others (notably children).

'Amy needs some support to... recognise what a safe, healthy and respectful relationship looks like. Amy has not always been able to put her children's needs before her own need to have a relationship. She has not always made good choices in her relationships'

Framing the experience of domestic abuse as a result of women's poor choices is an age old woman blaming and victim blaming trope. It uses psychological discourse implying that what is required is knowledge and understanding, and rests on the notion of rational actors with all the information, as opposed to embodied social beings subject to power structures. Interestingly, there is a discussion in the judgment of why Amy has not attended a domestic abuse course which related to childcare and transport issues; pointing to the material nature of (lack of) privilege. It is unlikely that were Amy to have attended the course the outcome would have been different, however it is still used as a reason for her not being ready to be a safe parent.

A key passage in the judgment relates to Amy becoming pregnant during the assessment process. She decided to have a termination even though she wanted to keep the baby, because she thought it would harm her chances of caring for Tilly and look bad to professionals. Reading this is heart breaking. However, it is interesting that the narrative around this from the social worker (as reported by the judge) is to bemoan

*Amy's continued relationship with Mr X. In the only instance of a professional being described as anything but professional and rational, the judge writes that in the social worker's report 'there is a certain level of frustration... about the way that Amy went about seeking out [Mr X], even though he has repeatedly rejected her'. She goes on to say that the relationship was unhealthy and the pregnancy impacted on Amy's mental health. The desperate woman, responsible for her own downfall is invoked through the use of this language. Despite Amy's decision to have a termination, the social worker is cited as saying that 'it is concerning that (Amy) does not, or will not, allow herself to recognise how her decisions (to have another baby) would impact on Tilly'. Reading the narrative of the judgement, it seems that the very fact of the pregnancy and its revelation that Amy was continuing a relationship with Mr X shifted the whole tenor of the assessment. This was when Amy's mental health is reported to have deteriorated and the local authority makes its application for adoption. One cannot help but feel that this course of events, and the reported frustration that ensued from the social worker, played a large role in the ultimate decision, even though it does not get much airtime in the final judgment. It is reduced to non specific language around Amy's decision making in relationships.*

*The inclusion of Amy's reasons for having a termination, that is the concern about professionals' opinions, is striking. There are also further examples of the text's reflexivity for example where Amy speaks about wanting to talk about her mental health but also worrying 'it feels like it makes me think I look weak or social are going to use it against me, or if I do this (taking medication) then they may say it's good, but use it against me down the line'. This quote gets right to the heart of the power dynamic and indeed the research questions about how psychological discourse is used, sometimes against mothers. Indeed, the very judgment both praises Amy for her openness about her mental health and also lists it as the main reason for the removal of her child.*

*The relationship with professionals is listed as a key area of concern and one of the three areas that leads to removal. There is reference to Amy's 'defences' and 'defensiveness', the former of which has a strong psychological tenor coming from Freud's theory of the unconscious. However it is used*

*This links to discourses of 'help' and 'support' which are threaded throughout the judgment. Therapy is needed to 'process' life events, and the fact of not having done therapy means that someone cannot have moved on and be rid of the impacts of these events. The idea of 'processing' and therapy being a 'journey', a common psychological discourse, are referred to multiple times. Even though Amy has started to have some therapy, the judge writes that 'it will likely take a long time and will be a hard journey'. Thus this entrenches the idea of trauma being a fixed thing which will take a long time to heal and can only be done through talking therapy. This creates a narrative whereby a mother has not done the right kind of psychological 'work' (or had access to the right resources to do so) to overcome her life experiences. The notions of processing and recovering from experiences draws strongly on psychological discourse. By talking about life experiences, there is an implicit assumption that these are individual episodes relayed to Amy and her family or close others, and negates the idea of life experiences as being related to structural inequality, lack of state support, experiences of systems outside her family and relationships.*

*References to Mr X, Tilly's father are few and far between. However it is noted that he has a child from another relationship who was also subject to care proceedings. It is*

*also stated that he did not take up the offer of contact with Tilly and ‘has not engaged with the local authority since then’. He gets little further mention except in reference to Amy’s pregnancy and when referring to the adoption process and contact. This is telling because, as mentioned above, it is stated that domestic abuse and relationship choices are a large part of the reason for removal, but the perpetrator’s role in this are fairly invisible in the judgment.*

*Whilst my focus is on mothers and therefore it might appear that I have zoned in on the judgment’s comments on Amy, in fact this is the main thrust of the whole judgment. There are allusions to Amy as a parent, and the impacts of her mental health, but a vast majority of the judgment is more like a character assessment of Amy. This in itself is interesting to note, as it points to the amount of scrutiny that mothers get on their own personhood. This might be seen as a taken for granted fact; Amy is the only parent subject to the proceedings therefore she gets the attention. But it is the in-depth excavation of her character which I find curious and likely indicative of wider discourses of motherhood.*

## Appendix D

### Discourse analysis

Judgment	Therapy	Trauma	MH	Insight	DA	Other
<p>106: ‘Tilly’, fourteen-month-old girl. Mother, ‘Amy’, , has mental health problems as a result of traumatic losses, cannot work well with professionals, has been victim of domestic abuse, and therefore cannot give Tilly the care she needs. Father not involved.</p>	<p>Needs therapy to process life experiences. CBT (p2,p9, J)</p> <p>Therapy as long journey (p9) including triggering MH</p>	<p>Not her fault – impact of life experiences</p> <p>Losing child will add further (p13)</p>	<p>MH impact on parenting capacity (p7- J)</p> <p>Impact of MH on taking advice</p> <p>MH is result of losses in past (p7-J)</p> <p>MH as connected to SW involvement (p9- J)</p> <p>MH as battles in her head’ (p8 – J cite M)</p> <p>MH as stigmatising, recognition of this (p8, J, M)</p>	<p>Ability to reflect on parenting is good</p>	<p>Needs support to recognise DA and healthy relats (p4- ISW)</p> <p>Put own needs for relat above child’s needs (p3- ISW)</p>	<p>Recognition of process, written very differently from other judgments, particularly short judgment. ( v sensitive/trauma informed )</p> <p>Therapy has helped but it is coming from amy – strength based</p> <p>Had abortion because thought professionals would think she should put t first..</p>

						P11 – positives of remaining with mother etc.
135: A, 10 month old baby girl. M and F have both have previous children removed from their care. M has used alcohol. F has diagnosis of paranoid schizophrenia and cannabis use. M at risk of entering in to abusive relationships, relapsing with alcohol use, not taking professional advice.	Not having engaged in recommended therapy (p4, psych)  Therapy as way to 'fix' personality and self esteem issues (p16, psych)  Therapy as journey (p24)  Therapy as punishment 'until she addresses...'  Therapy to stop being a victim of DA (p24, J)	M not at fault for own experiences, but now inflicts same on child (p15, SW)  Impact of separation mitigated by knowing foster carer (p13, J)	Genetic/environmental cause of MH (p12, SW)  Untreated MH = dangerous (F) (p3, J)  Paranoia re court = MH  MH causes alcoholism not the other way round (p10, psych)  F says using alcohol to deal with stress of court, this seen as bad and no reflexivity	M not acknowledging harm caused to previous child-concern. 'lack of reflection' (p14)  Not accepting MH diagnosis F has no insight in to his MH (p18, SW)  'need to accept issues to address them'(p19, SW)  M has not learnt from courses	Personality traits make M vulnerable to exploitation and negative influences (p10, psych)  F not accepting responsibility for DA and blaming victim (p20, j)  M being abused inevitably puts a child at risk-how M feels will impact child (p22, J)  Poor decision making	Judge finds that M displays avoidant and compulsive personality traits which impact ability to protect child and make it more difficult to change her behavioural patterns (p10, J)  That is what a good enough parent would do (p16)  No sympathy or understanding – irrational behaviour e.g. wanting to have a specific turning point worker,

					Risk of forming risky relationships (p23, psych)	
146: One year old child. Mother experienced sexual abuse from father and brother, was in care from 13, uses cannabis, and has personality difficulties, prioritises relationship over child. Left child in assessment unit saying couldn't cope, now wants to care for child. Father involved but not putting self forward. Mother and paternal	Need therapy to address childhood trauma, but can't do it whilst caring for child due to stress (p4- psych)  Therapy essential but prognosis uncertain, timing (p6 – j)  'therapeutic journey' (p16, 30 - j/MGM)  'serious / tough therapy' vs relazing (p18, 19,)	Trauma is an illness/problem that needs to be solved: whilst there was evidence of positive engagement there was also long standing poor mental health and trauma that was only just starting to be addressed. (p 11, ISW)  Risk of disengaging with trauma therapy (p18, Gu)  Trauma of child removed from family.	Mental health as bad/risky. Mental health issues longstanding and cannabis use poorly associated (p10- SW)  Mental health = emotional unavailability for child		M employs DA/psych discourse she returned to abusive partner because he accepted her flaws (p15, j/M)  There is potential for mother to at in non protective fashion by seeking relationships with risk individuals to meet her own well understood needs (p23, K(	significant personality difficulties with emotionally unstable... insecure attachment style (p4- psych)  father has significant unstable personality traits. (p5- psych)  needs to show sustained progress, not just progress

grandmother putting themselves forward.						
152: Joe, boy (age unknown but assume under 3 yrs. due to comment from SW). Mother 'Jane', father 'Jack'. Mother was in care herself, has history of significant complex needs (ADHD, ASD, OCD) mental health and forensic history including killing a cat. Father also history of mental health problems, and perpetrator of DA to mother and previous	Timing of therapy- DBT but only when settled in to parenthood (p18 psych)  needs therapy before cares for baby (p20, psych)	It is accepted that removal from parents causes developmental trauma – but mitigated by adoptive family (p22, SW)  M is care leaver, sig childhood trauma (p4, J)	MH makes you irrational, unreasonable (p7, 81- J)  Unable to keep herself safe (suicide attempts) (p8)  Postnatal risk to MH (p13- LA)  MH increased risk of abuse and neglect (p18 – psych)  Perception not reality (p23- J)  Complex personality profile – personality disordered traits (p18 Psych, p35 , 36 - J)  Emotion regulation	M needs therapy to help develop insight in to defensiveness  Lack of insight, unable to reflect on professional crit (p16 – J, p30 - Gu)	M has been in relats where she has been victim of DA	Attachment: child can form alternative attachment relats (p46)  First three years are detrimental re attachment (p22)

<p>partners. Parents deemed incapable of providing care joe needs.</p>						
<p>77</p>	<p>Therapy doesn't work if entangled in unhelpful relationships (p12)</p>	<p>Trauma is passed down through generations... Both the LA and Guardian have talked about "intergenerational neglect" (p2, J)</p>		<p>Mother would struggle to make changes as she doesn't see the need to make change</p>	<p>Mother normalises violence in relationships due to childhood experiences (p 11, psych)</p>	<p>Baby known to LA due to mother's social care history</p> <p>The mother reportedly received a high level of support which was delivered (according to the unit) at an appropriate level for her cognitive functioning</p> <p>Mother is enmeshed with a disordered and unsafe network (p11)</p>



