



Into the Key of Law:

Transposing Musical Improvisation.

The Case of Child Protection in Northern Ireland

What
the
participants
are
saying

Interdisciplinary project led by

Principle Investigator (PI)

Dr Sara Ramshaw, University of Exeter, School of Law

Co-Investigator (CI)

Dr Paul Stapleton, Queen's University Belfast, School of Creative Arts,
Sonic Arts Research Centre (SARC)

Research Fellow

Dr Adnan Marquez-Borbon

Research Assistants

Dr Kathryn McNeilly

Seamus Mulholland, Barrister-at-Law

Research Assistant and Archivist

Matilde Meireles, PhD Candidate

ABOUT

This booklet presents an overview of newly documented conversations with **professional musicians, social workers, community workers, lawyers and judges** about the role that **improvisation** plays in their working practices. These discussions provide clear evidence that improvisation is much more than 'making it up as you go along'. Rather, effective improvisation is shown to be a **highly skilled social practice** that is learned through **shared experience** and refined through **open and attentive listening** to the **uniqueness** of each new case or performance. These conversations have taken place as part of the Arts and Humanities Research Council funded project, ***Into the Key of Law: Transposing Musical Improvisation. The Case of Child Protection in Northern Ireland.*** The project aims to support more creative, collaborative and ultimately just decision-making, with particular attention paid to the arena of Northern Irish child protection law.

We also hope that the contents of this booklet will be useful to **professionals working in a broad range of fields** as a way of challenging the current widespread adoption of risk-adverse bureaucracy which has largely failed to deal with the complexities of modern society. In many areas, this is resulting in the de-professionalisation of skilled workers through an over-reliance on generic targets and procedures. Therefore, our objective is to champion the ability of experienced practitioners to **skillfully adapt** to future events that cannot always be predicted with a sufficient level of certainty, or for which a single correct response does not exist.

What follows aims to shed light on:

1 /

Existing challenges and opportunities in relation to child protection in Northern Ireland, including issues of resources, delay, risk, and power dynamics. This briefly introduces the context of our study.

2 /

Improvisation in practice, including the topics of decision-making, discretion, intuition, anticipation, listening, empathy, adaptability and responsibility. This is the primary focus of this booklet.

3 /

Possible ways forward, including prioritising experiential over textbook learning, recognising expertise as skilful adaptability, adopting constraints that are case-sensitive rather than bureaucratically imposed, and the potential of collaborative rehearsal opportunities.

These are preliminary ideas that will be developed further in future publications. All quotations from social and legal professionals have been anonymised due to the sensitive nature these fields. All quotes attributed to named sources are from improvising musicians, using self-identified designations.

1 / EXISTING CHALLENGES AND OPPORTUNITIES

Family law is unique in that the factual matrix one has to consider is never fully crystallised or frozen in time. It can be like working on shifting sands. During the currency of a case the family life continues. The circumstances of the child and the family can change. This is to be contrasted with other areas of civil law and the criminal law. In those it is common that a discrete event will have taken place, and the court thereafter can consider that event with boundaries in time. Not so in family law.

Together with our participants we have identified the following constraints that can be seen as both limiting and supporting creative action in Northern Irish child protection law:

Resources and Delay

Improvising is what we're asked to do when resources are scarce. You know, make more with little — especially when demand from families for services, for therapy, for intervention, is rising, right at the point when government funded resources are diminishing. That's when it's good to be a good improviser. Because we're all doing this all the time. We're all making do. We're all using our best skills, and finding workarounds, and using our human relationships to get through the red tape, or provide a response that could be more useful.

~ Ellen Waterman (Scholar, Performer, Improviser)

It's very difficult to talk about the issue of delay without looking at resources. There's a lot of talk around early authoritative interventions now. But, actually we don't have the resources, either financially or human resources, to deliver on that very practical, preventative work, that needs to take place to prevent your families getting into crisis, and ending up in the courts system.

~ NI Child Protection Social Worker

We are currently having these debates about delay in so many different fora, and the joke is, I think, there is less and less money as every day passes, and social workers are under more pressure; lawyers are under

more pressure; judges are under more pressure, and we're asking the same questions, and there is less and less money.

~ NI Judge

I think allocating sufficient judges to ensure that there is no avoidable delay is probably the biggest thing that the Lord Chief Justice can do in consultation with the presiding judge at each tier.

~ NI Judge

It's just time. Normally I'm contacted by a solicitor and they will send me a very brief outline of the case. I then send them my fee note and my availability. It wouldn't be unusual that I then wait for six to eight weeks. So that is six to eight weeks in which nothing has happened.

~ NI Child Protection Social Worker

Risks

Let's say you have a very young mother. There has been non-accidental injury of a child. The mother is given an opportunity to do work. After a considerable number of weeks, getting very great support, she is found to be with a drug. Now, in retrospect, what would you say: the time she spent in there was wasted? But, who could have said that in advance? She had to be given the opportunity.

~ NI Judge

It's difficult the way things are set up at the moment: who would want to be a social worker? You're damned if you do and you're damned if you don't.

~ NI Judge

Cases that are only presented on submissions worry me. If it's a contested matter, I'll insist on hearing evidence. You might be told, 'Well, the trust say once a week. Mum would like three times a week, and we'd like to do this on submissions'. I would say, 'No, I want to hear from the social worker and the guardian. I want to hear why the trust say once a week. What's wrong with three times a week? Why do they think it isn't in the best interests of the children?' And then you hear it challenged. I say, 'Well,

I don't think there's any reason why the mother can't have contact three times a week.' But, you can't do that purely by submissions.

- NI Judge

Power Dynamics

I have kicked ass around my court day in and day out, and demanded that assessments are done more quickly than I was told they could be done. There is delay everywhere. If there has to be an assessment, I am told 'Well, we have to make a referral first to the resource panel to see will they pay for it' — even though the judge has said, 'I want it done!' I was up against a massive system where delay is endemic.

~ NI Judge

I wouldn't like to be cross-examined in court. These are people who are doctors, psychologists, or forensics experts, and they may well say, 'Look, I've got enough to do with my own professional life without — in my spare time — becoming an expert witness, and going into court, and being lambasted. Why should I do that?'

~ NI Judge

I think in the current legal system we get on to a circuit of dates and we work to those dates. I think there has to be much more direction and collaboration between trust and legal system.

~ NI Child Protection Social Worker

Often judges would say, 'Well, I think perhaps you should discuss this with your client and I'll rise for half an hour'. That's generally meant as a strong hint that this matter can be resolved and there are a number of things that just have to be talked through.

~ NI Judge

I think that maybe we're guilty of not recognising that social workers seem to be quite afraid sometimes of coming to court, and having to give their evidence, and being torn apart by lawyers. But, I think, judges support them.

~ NI Judge

2 / IMPROVISATION IN PRACTICE

The relationship between improvisation in music and child protection law is closer than one might think.

Decision-making and Discretion

When a group of musicians get together to improvise, we're not taking anything like the kinds of risks that social workers are facing every day. I want to say that this project of seeing how you can create more flexibility, adaptability, responsive listening: it's not something to take lightly. I like the idea of rules for play. We don't operate outside of a context. It's very important that we learn how to use rules and relate to rules in a positive way.

~ Ellen Waterman

It is part of the proper discharge of one's function that one is prepared to change one's mind and should be open to thinking again.

~ NI Judge

By its very nature, to improvise is to make choices. It's to be intentional. It's to decide to engage in the musical moment in particular kinds of ways.

~ Ellen Waterman

I'm the one who has to waken in the early hours of the morning and decide is this the right way forward?

~ NI Judge

In the Family Proceedings Court, you have lay magistrates which means there probably is much more discussion on the way forward. That may well have helped. Whereas, in both the Family Care Centre and the High Court, it's the loneliness of the decision-maker.

~ NI Judge

I think judges should be given a lot of discretion because families vary so much, and, in theory, that's good. If you've got a good judge, that's brilliant because you'll get flexible, tailored solutions. On the other hand, it allows

ideology maybe to interfere. The welfare principle can mean anything to anyone and such can be justified by generic language like 'the welfare of the child requires ...', or 'the Article 8 rights of X requires ...'.

~ NI Family Law Barrister

The legal principles are straightforward. What is difficult in family work is applying those principles to every single case because every case is so different and so unique.

~ NI Judge

Things can seem perfectly logical, but then some new piece of evidence emerges, or someone looks at a piece of evidence and says, 'Ah, but, no, that's not quite what I meant', and they put a new slant on it. It's rather like a child playing with a kaleidoscope. He gives it a shake and suddenly the picture is quite different.

~ NI Judge

You're playing something and listening with the intention of moving from A to B in the next moment, and then something happens in the music, which you hear, and you realize, 'Ok, that would be a bad choice. I've got to do something else.'

~ John Butcher (Performer, Improviser, Composer)

The artist's role is to show how we can gracefully deal with surprise and complexity.

~ David Borgo (Performer, Ethnomusicologist)

Intuition and Anticipation

You do have an intuitive approach. Nearly from the start you can see who has potential to get back on track and who doesn't.

~ NI Family

It would not be unusual to read a set of papers and have a preliminary view, and then hear oral evidence, (or insist on the evidence being tested), and

form a very different view. As a judge, I am used to keeping a very open mind throughout, and I think it's vitally important in family work.

~ NI Judge

Anticipation is tricky because there are moments where you want to create a sound, but you're also waiting for the right moment. When I have that moment of anticipation where I want to make that sound, but it doesn't happen for one reason or another, it becomes something completely different. It unexpectedly changes the whole sculpture of the sound piece.

~ Maria Chavez (Improviser, Sound Artist, Performer)

Listening and Empathy

Skill in improvisation more than instrumental technique is about the skill of the performer as a listener.

~ Maria Chavez

The problem with listening, or the word *listening*, is that very often it's used in a kind of sense like it's dropped in and therefore needs no qualification, but really it needs to be active. Active listening can result in committed playing.

~ Simon Rose (Performer, Researcher)

There is a tendency initially to expect that a lot of these issues get dealt with through the parties dealing with them outside and coming in and telling the District Judge what they have agreed as opposed to the judge and the lay magistrates being involved in those discussions.

~ NI Child Protection Social Work Academic

Improvisation makes you conscious and alert to the world. It awakens listening skills that are highly specialised and that make you aware of your sonic surroundings. It makes you be conscious of other people playing with you.

~ Wilfrido Terrazas (Performer, Composer)

It is a key task for any judge to not just listen, but to convey to the parties that they have been listened to. It is an absolute priority that vulnerable parents are made to feel that they matter. That they are treated with dignity and respect. I consciously speak directly to parents. Very often the vulnerable people who find their way into court have never been listened to by anyone. They've been treated like pieces of dirt by authorities all their lives, and, as a judge, I make it a priority that they will not feel like that. If people genuinely feel that they have been listened to; that the judge has understood their point; that the judge has given it proper consideration, even if they lose, they can deal with it because they have been listened to.

~ NI Judge

It's to do with picking up the messages other people are putting out and responding to them, which requires a level of nuance and a kind of listening training that you get from studying an instrument well.

~ Bennett Hogg (Composer, Improviser, Cultural Theorist)

Improvising means weaving networks of human connection. It involves emotional skills that have to do with experience and human emotions like affection and respect. It is the development of work that has to do with democratic and horizontal thinking.

~ Wilfrido Terrazas

A boy of 14 really changed the direction of his case by wanting to see us. We then focused on what his concerns were, and we tried to identify that to the social workers concerned. So, sometimes hearing the voice of the child — as it's often put — is very important.

~ NI Judge

Listening is something you learn with someone else, either in groups or in duos. You start listening to someone else and you understand what it means to respond to them.

~ Franziska Schroeder (Performer, Theorist)

You need time to listen properly because you want to be able to know that when this child reaches eighteen, and he looks back over his records, he understands why you took the decisions you took, and that it wasn't because of time, it wasn't because of resources, but actually it was evident from his perspective, 'I was paramount in your thinking'. And I'm not sure we're at that.

~ NI Child Protection Social Worker

Responsibility and Adaptability

What is the framework in which we have to improvise? I think there are rules. Parliament hasn't asked much of us: to achieve not only the welfare of the child, but also respect for family life. Quite often there's a major tension between those two objectives. How on earth do we do that? I want to look at what we can do — and this is the improvisation bit — how can we adapt or change our practices within that legal framework to maybe achieve different outcomes.

~ NI Judge

Often there are decisions made out of complete unknowing and uncertainty about where I'm going next.

~ Matthew Bourne (Performer, Composer)

Spontaneity is a weird word because, at least in the English language, it is about this idea that it comes out of nowhere. That you don't pre-plan it. That you don't have any liability or responsibility for it because it's spontaneous. If you make an action it comes from the sum total of your experience as a human being up to that point.

~ Bonnie Jones (Writer, Improviser, Performer)

You've kind of a rough idea in mind as to what you're there to do. But, at any given moment that could change; and I think the skill is adapting, and including those disturbances — they are unexpected and do sort of come in to the narrative of what you're doing.

~ Matthew Bourne

I think there is huge scope for improvisation, flexibility, creativity, to get the right solution to an individual family problem. When I realised what the *Into the Key of Law* project was about, I thought this is wonderful and so dear to my heart because, when I began doing family work as a judge 3 years ago, I had no background at all. I came to it completely fresh, and one of the things that struck me very early on was the rule-based, textbook approach that social workers and other professionals brought to the resolution of an infinite variety of family problems. And, as a mother, I knew that it couldn't be right that every child would need the same contact arrangement as every other child. It couldn't be right as a matter of common sense.

~ NI Judge

Improvisation is about when you get to those places that nobody in the group could have imagined beforehand. They couldn't have put it into words beforehand. They couldn't have put it onto paper beforehand. They couldn't have got other musicians to do it beforehand. It's gone somewhere different.

~ John Butcher

3 / POSSIBLE WAYS FORWARD

Our research suggests we need to make more explicit how improvisational skill is acquired, recognised and applied.

Experiential versus Textbook Learning

It is important for one to truly know the instrument. It could be through traditional ways or self taught, but that knowledge has to be the firm base for any improvisation. However, it wasn't like I learned through somebody telling me the rules. It was more like trying things out and then experiencing it through my own critical parameters.

~ Okkyung Lee (Performer, Improviser, Composer)

I can only assume that professionals are trained not to be creative in as wide a sense as they really need to be. The textbook response would repeatedly be set-out in every single case, and there was an anxiety about

thinking outside the box; doing something new; something innovative. An anxiety which was palpable.

~ NI Judge

Looking too much at what people have already done isn't always the best way to find out what you want to do.

~ John Butcher

I've played with people who have too much drilled technique in their approach. They are actually difficult to improvise with because there's this level of inflexibility.

~ Bennett Hogg

We navigate through whatever the given situation is as a result of our own experiences. It's essentially self-taught because you can't really teach somebody how to listen and respond, but you can bring their awareness to it.

~ Matthew Bourne

I think it was a real benefit not having a background in this type of work because I came to it fresh, but with skills from a lot of different legal areas. I didn't have any preconceptions, and I started from the premise, 'How will I serve the welfare of this child?'

~ NI Judge

When you're in a room with some great improvisers you can feel the tension of them searching and not knowing what's going to happen. You see someone do something and then other people coping with their little strategy of how to deal with that. You absorb that. It goes inside you. Then, when you're in another situation, you've got that strategy.

~ Steve Davis (Performer, Composer)

The majority of my techniques were developed through performance. They originally were accidents that I was able to revisit and develop, and

learn what other sounds this particular accident could create. That's how I developed my sound vocabulary.

~Maria Chavez

I think there's something about improvisation that requires constant renewal and rejuvenation.

~ Simon Rose

Expertise as Skilful Adaptability

An improviser draws upon their whole lexicon of ideas, musical gestures, techniques, practices, cultural conditioning — everything that they come with.

~ Ellen Waterman

Inevitably you can't avoid acquiring a certain expertise. As a judge, you need to be very careful not to get into the temptation of believing that, by dint of experience in other cases, you have acquired a level of knowledge beyond that of the expert. But the expert should never be allowed to address — much less to proclaim definitely on — the issue that the tribunal has to decide. I think it probably is important in those cases to guard against the encroachment of experts into the decisions that the court has to take.

~ NI Judge

I never think ahead saying, 'Ok, I need to start preparing for that improvisation concert now'. 'Cause you always want to be ready and, if you're playing all the time, and if you're practising, then I think you are always ready.

~ Franziska Schroeder

An expert improviser would understand the importance of the social context, and that in an ideal world would include playing with people who are not experts. The word *expert* has hierarchical implications, so *highly experienced* or *effective* may be more valuable concepts.

~ Simon Rose

Ways Beyond Bureaucracy: thoughts on the English model of 26-week timelines for care proceedings

I don't endorse the guillotine of a particular period of weeks. But, setting regular court appearances, regular opportunities for parties to object, if something is not being done, or to change direction. I think that's the way forward, as far as we're concerned. To try to keep the cases constantly in front of us, and constantly see what we can do to improve things.

~ NI Judge

In children's cases — above all — it's impossible to be rigidly prescriptive about the time that needs to elapse.

~ NI Judge

The issue of imposing time limits really comes into play with individuals who have drug or alcohol issues because the trust will often want to see a period of abstinence (normally 3 to 6 months). That's not going to fit within a 26-week timeframe. You're essentially saying from the outset, someone with those problems can never succeed.

~ NI Family Law Barrister

Hydra: a space for collaborative rehearsal

Hydra is a creative training tool, which emerged from this study, for instructing legal advocates on how to be nimble-footed and better able to respond quickly and responsively to unexpected situations in the courtroom. Named after the serpent-like water monster with numerous heads in Greek mythology, *Hydra* hones legal argumentation skills, requiring participants to be Hydra-headed and skilled at rapidly analysing a legal issue from a variety of angles and perspectives, teaching advocates to be prepared for the unexpected.

Hydra addresses a gap in current legal advocacy training in NI by offering both newly called and established barristers the opportunity to work on their advocacy skills without the fear or anxiety of making mistakes and/or tarnishing their reputation — there is no 'right' answer in *Hydra* or judgment at the end. While barristers are self-employed and thus, in reality, always in competition with one

another for cases, *Hydra* is a fun and spirited way to improve 'attentive listening' skills, which involve an ethical commitment and responsibility to all that surrounds us. To listen — really listen — requires respect, openness and responsiveness, all of which must be practiced and honed. The practice of *Hydra* as a creative training tool for legal advocates thereby enhances empathy and adaptability by teaching barristers how to be open to uncertainty and embrace unpredictability in order to become better listeners, and thus better advocates, in the courtroom.

The following quotes, demonstrating the value of *Hydra*, are taken from focus groups with legal professionals and scholars at Queen's University Belfast:

I think *Hydra* is very useful to help you hone a range of skills that aren't taught, but are absolutely vital to have. When you're an undergraduate you learn the law, and you do your vocational training to learn the procedure, but you're never taught these skills. You have to have them.

~ NI Family Law Barrister

I think one of the problems with traditional advocacy training is that when you are preparing a case, you are given far too much time to prepare it. You have to be able to think on your feet, and *Hydra* addresses that. It gives you the skills to be able to literally be handed a brief outside a courtroom and go do that, or at least give you some guide towards that.

~ NI Family Law Barrister

With *Hydra* you have to jump into the role of every conceivable party. So you have to know all of the parties' positions and be prepared to switch between each party in various circumstances. You may be arguing one particular set of contextual points and have to suddenly reverse it. It forces you to know the case in greater detail than you would normally know it if you're appearing for one side specifically in a court room setting.

~ PhD Candidate in Law

As you think on your feet and react to different surroundings and you don't focus on a narrow outcome where we must win. *Hydra* develops one's skill

to create a strong, winning argument because you can still go and do that, but you can also accommodate possible arguments that can come at you.

~ PhD Candidate in Law

I think if we put judges through this process they'd have to think more about how they're making their judgments. Judges would make better decisions at the end of it, but it's a lot harder.

~ NI Family Law Barrister

The single biggest strength I see for *Hydra* is the ability to get everyone involved in it. That it's not just this linear thing between the person sitting on the bench and the advocate. All the other advocates, who would normally just take their turn in sequence, are involved.

~ NI Family Law Barrister

I think the one thing — this is perhaps what comes from improvisation — is not being fearful of the unknown and being able to know that you can deal with any situation that comes your way. That is a skill that improvisers have taught us: not being afraid to fail. Being able to handle disruptions and to handle problems better does require practice. You need to practice your ability to deal with uncertainties, and I think that's sort of the key thing about *Hydra*: it just brings in uncertainty after uncertainty after uncertainty, and you need to figure out a way to deal with them.

~ NI Family Law Barrister

I can certainly see the benefit of *Hydra* being used with a range of professionals where they come together to share information, analyse that information to arrive at a decision, or a course of action to take.

~ NI Social Work Academic

For more information on our AHRC funded research project, ***Into the Key of Law: Transposing Musical Improvisation. The Case of Child Protection in Northern Ireland***, including previous and future outputs, please visit www.translatingimprovisation.com/ahrc





translatingimprovisation.com/ahrc