“They Only Hit Until You Cry” Therapeutic Jurisprudence and the Limits of Safeguarding

Abstract

Suzanne Vega’s *Luka* (A&M Records, 1987) was one of the first mainstream pop songs to speak from the perspective of a child experiencing domestic abuse. Its calm delivery and matter-of-fact lyrics hint at an environment in which violence has become normalised. This article uses *Luka* as a jurisprudential device to illuminate a central tension within English safeguarding law: the gap between statutory protection and emotional recognition. Drawing on Therapeutic Jurisprudence (TJ), it argues that law’s formal structures, while well-intentioned, can be anti-therapeutic when they prioritise procedure over presence, investigation over listening.

The analysis situates the song’s narrative within the current legal framework under the Children Act 1989, s. 47, the Domestic Abuse Act 2021, s. 3, and the Department for Education’s *Working Together to Safeguard Children* (2023) guidance. It considers the leading authorities, *Re W (Children)* [2010] UKSC 12, *In re B (Children) (FC)* [2008] UKHL 35, and *Re H (Minors) Sexual Abuse: Standard of Proof* [1996] AC 563 and evaluates whether the law’s promise of child-centred protection is realised in practice. The article proposes a TJ “listening ethic,” reframing the duty to investigate as a duty to hear.

By placing a pop song in dialogue with doctrine, the article demonstrates that culture often reveals the emotional deficits of law. Safeguarding becomes therapeutic only when it enables children not simply to be questioned, but to be heard.

Keywords:

safeguarding; trauma-informed practice; Therapeutic Jurisprudence; children’s law; disclosure; domestic abuse.

1. “My Name is Luka”: Introducing a voice the law couldn’t hear

“My name is Luka; I live on the second floor.”

Suzanne Vega’s *Luka* (A&M Records, 1987) opens with a child’s attempt at ordinary conversation. The tone is calm, the melody bright, and the phrasing polite. Only gradually does the listener understand that Luka is describing violence at home. “They only hit until you cry” is delivered as if it were a rule, not a plea. The music’s lightness makes the story more unsettling. What Vega captures is not only harm but the emotional grammar of survival: quietness as safety, endurance as maturity.

This article argues that English safeguarding law often reproduces that same quietness.
The Children Act 1989 requires local authorities to make enquiries where there is reasonable cause to suspect that a child is suffering or is likely to suffer significant harm (s. 47). The Domestic Abuse Act 2021 recognises children who see, hear or experience domestic abuse as

victims in their own right (s. 3). The Department for Education's *Working Together to Safeguard Children* (2023) guidance insists on listening to "voice of the child" and embedding child-centred practice. Yet, as Featherstone, Morris and White (2014) observe, families often experience safeguarding as something done to them rather than *with* them. Participation is promised but rarely achieved. The distinction between recording a child's account and creating conditions in which that account can meaningfully shape professional response mirrors what Lundy (2007) identifies as the difference between nominal "voice" and effective hearing, where space, audience and influence remain structurally constrained even when speech is formally invited. Policy scholarship confirms that this gap is structural. Powell (2020) demonstrates that "child safety" has become juridified within an audit-driven culture that prioritises procedural accountability. From a TJ perspective, this produces anti-therapeutic outcomes, as emotional security becomes secondary to procedural compliance.

TJ offers a means of understanding this contradiction. Developed by Wexler and Winick, TJ asks: to what extent do legal rules, institutions, and professional encounters produce therapeutic or anti-therapeutic consequences for those they affect (Wexler, 1990; Winick, 2003)? The question turns attention away from outcomes alone to the psychological and emotional impact of legal processes. King, Freiberg, Batagol and Hyams (2014) identify three elements that make a process therapeutic: voice, validation, and respect. These values are not sentimental additions to justice but indicators of whether the system supports dignity and trust. Their absence, even in procedurally correct investigations, can make law itself a source of harm.

This article, therefore, adopts Wexler (1990) and Winick's (2003) central inquiry: to what extent does English safeguarding law, its procedures, and the behaviours of its professionals generate therapeutic or anti-therapeutic consequences for the children they are intended to protect? Framed this way, the analysis asks whether the statutory duty to investigate under the Children Act 1989 and the accompanying policy commitment to "the voice of the child" genuinely promote dignity, trust and wellbeing, or whether they sustain a culture that hears but does not listen. In doing so, the article examines how legal procedures shape the emotional experience of protection, and how re-interpreting those procedures through the lens of TJ could transform that experience.

Doctrinally, safeguarding law appears coherent. Statutes and guidance define duties to investigate, share information and place the child's welfare as paramount. Yet law is *lived* through encounters rather than texts. Each question, meeting, and report carries both emotional and procedural weight. The difficulty lies not in asking questions but in how they are asked. In *Luka*, the neighbours "hear something late at night" yet "only ask questions." They gather facts but fail to listen. The song's refrain captures the difference between inquiry and understanding, between investigation and hearing. That distinction lies at the centre of this article's argument.

The analysis treats *Luka* not as a cultural ornament but as a site of legal meaning. Following scholars such as Bandes (1999) and Ewick and Silbey (1998), law is approached here as a cultural practice that communicates values and emotions as much as commands. Fictional or artistic texts can reveal how legality feels and how institutions imagine the people they are designed to protect. Reading *Luka* as a jurisprudential text illuminates the emotional logic that

underpins safeguarding practice, a logic that can transform procedural caution into emotional distance.

TJ has rarely been applied to the cultural representation of law, yet its concern with emotion, dignity, and relational justice makes it particularly suited to such analysis. TJ does not claim that the law should become therapy; instead, it asks whether legal processes are consistent with the psychological wellbeing of those who experience them. In the safeguarding context, this means asking whether the legal framework and the professional interactions it structures enable children to speak safely, to feel believed, and to experience protection as empowerment rather than control.

This article, therefore, proposes a duty to hear, an interpretive principle that reframes the statutory duty to investigate through TJ's concern with voice, validation, and respect. Listening in this sense is an active legal practice, not a metaphor or aspiration. It requires professionals and agencies to recognise silence as meaningful, to attend to emotional cues, and to understand that the manner of questioning can shape the truth that emerges. The duty to hear transforms the passive "vice of the child" into an active right to be heard well.

This argument examines law's affective life through popular culture, considering how legality can be sensed as well as described. In Luka, attention shifts from how law "sees" to how it "listens." The song invites reflection on how legal authority is felt in tone, language, and encounter. These dynamics suggest that legality operates not only through rules and procedures but also through the emotional texture of human experience.

Contribution of this article

This article makes three contributions. First, it conceptualises listening as a legal condition of child protection, rather than a discretionary welfare value, by situating TJ within the statutory safeguarding framework. Second, it offers a doctrinal reinterpretation of s. 47 of the Children Act 1989 and s. 3 of the Domestic Abuse Act 2021, arguing that these provisions already contain a duty to create the relational conditions under which a child can be safely heard. Third, it demonstrates the value of cultural texts, here Suzanne Vega' *Luka*, as diagnostic jurisprudential tools that reveal how safeguarding law is felt in practice. Taken together, these contributions reorient safeguarding from procedural listening to hearing as legal recognition.

The discussion proceeds in five parts. Part Two outlines the theoretical foundations of TJ and its relevance to trauma-informed and relational models of justice. Part Three analyses *Luka* as a narrative of concealment and endurance, exploring how its lyrics and musical structure represent the emotional consequences of not being heard. Part Four connects these insights to English safeguarding doctrine, examining how statutory frameworks and judicial reasoning construct the idea of the "child's voice." Part Five elaborates the concept of a duty to hear as a practical ethic, proposing reforms that would embed therapeutic principles within statutory interpretation and professional guidance. The conclusion considers what a legally literate form of listening might look like, and what justice would sound like if the child were truly heard.

Luka is not only a song about harm. It is a quiet jurisprudence of endurance, exposing the gap between law's procedural care and its emotional absence. Protections without empathy

reproduces the silence it claims to end. Listening, therefore, is not a benevolent act but a legal responsibility. Justice begins when the child's voice is not simply recorded but recognised as truth.

2. "They only hit until you cry": Therapeutic Jurisprudence and the duty to hear

TJ reframes law as a site of affective consequence. Conceived by Wexler and Winick in the late 1980s, TJ's claim was not simply that law can heal, but that it inevitably harms or heals through its forms, language and procedures (Wexler, 1990; Winnick, 2003). Its insight is jurisprudential rather than psychological: law is a social practice that shapes human feeling. The central question, to what extent do legal rules, institutions, and professional practices generate therapeutic or anti-therapeutic effects, situates wellbeing as a measure of legality itself.

This marks a deliberate challenge to the moral neutrality claimed by liberal legality. TJ exposes the fiction that the law can be emotionally disinterested. All legal processes involve tone, timing and affect; they authorise some forms of expression while silencing others. In that sense, TJ operates as a critical method as much as an evaluative one. It interprets the emotional life of law not as excess, but as evidence of how legality is lived.

The framework that underpins TJ, comprising voice, validation, and respect, provides a vocabulary for analysing how law structures human interaction (King et al., 2014). In safeguarding, these principles are not sentimental ideals but measures of legitimacy. "Voice" refers to a child's meaningful participation in decisions that concern them; "validation" is the recognition that their perspective carries moral and evidential weight; and "respect" is the assurance that they are treated as subjects rather than objects of protection. When these elements are missing, law risks reproducing the hierarchies of power that cause harm in the first place. TJ therefore exposes how formal compliance with welfare duties can coexist with emotional neglect. Assessments may record a child's words yet fail to acknowledge what those words signify.

Applied to safeguarding, TJ reframes familiar statutory duties as questions of emotional architecture. The obligation under s. 47 of the Children Act 1989 requires local authorities to make enquiries where there is reasonable cause to suspect significant harm. In doctrinal terms, the provision operationalises the state's protective function through a procedural mandate. Once risk is identified, the machinery of investigation is triggered. Yet, as Wexler (1990) and King et al. (2014) observe, procedure alone cannot guarantee a therapeutic outcome. A process that fulfils its statutory form but neglects its emotional substance may reproduce the very dynamics of power and fear it seeks to redress.

TJ reveals that safeguarding investigations often mistake information-gathering for understanding. Research consistently shows that children experience these processes as alienating rather than protection. The Department for Education-commissioned *Pathways to Harm, Pathways to Protection* report (Sidebotham et al., 2016) found that professionals frequently noted injuries without engaging with meaning. Ofsted's (2022) review of social work practice reported that children's voices were "recorded but rarely explored," and that meetings were dominated by checklists rather than dialogue. Featherstone, Morris and White (2014) similarly argue that the bureaucratic culture of risk management fragments empathy

into compliance. In TJ terms, these practices are anti-therapeutic: they meet the form of protection while violating its spirit.

The Domestic Abuse Act 2021's recognition of children as victims in their own right (s. 3) is a welcome symbolic correction. It aligns with TJ's insistence that law should acknowledge the full personhood of those affected by harm. Yet without structural reform, symbolic recognition risks reverting to administrative detachment. The Act's promise of validation is undermined when implementation focuses on categorisation rather than care. Law "listens" only in the narrow sense of collecting evidence, not in the therapeutic sense of hearing with empathy and intention.

The question is therefore not whether safeguarding law listens, but how it listens and what its listening feels like to those within it. The TJ perspective insists that listening is not a procedural courtesy but a moral act. A process that fails to create psychological safety cannot claim legal success, however perfect its paperwork. In this light, safeguarding becomes a test of law's emotional intelligence: its capacity to hear without harming.

David Wexler's (1997) "wine and bottle" analogy illustrates this disjunction between legal structure and emotional experience. The "bottle" represents the formal framework of law, its statutes, procedures, and doctrines, while the "wine" is what flows through it: the human interactions, tone, and empathy that give those frameworks life. The insight is that a law may be doctrinally sound yet emotionally counterproductive if it is experienced as adversarial or detached. In safeguarding, statutory duties exist, but the interpersonal delivery of those duties can sometimes fail to convey safety effectively.

2.1 From trauma-informed to relational justice

TJ's intersection with trauma-informed and relational models of justice brings this critique into sharper relief. Trauma-informed practice, developed within clinical and social work disciplines, begins from the premise that human behaviour often reflects survival strategies rather than pathology (Substance Abuse and Mental Health Services Administration [SAMHSA], 2014; Bunting et al., 2018). In this frame, silence, avoidance, or compliance may signal safety-seeking rather than disengagement. Law, however, tends to interpret those responses through suspicion and proof.

TJ reconfigures that tension. It asks whether the design of legal encounters, including their language, chronology, and emotional temperature, respects the fragility of disclosure. Trauma-informed justice and TJ therefore share an epistemological claim: that knowledge cannot be separated from care. In safeguarding, this demands a radical reconsideration of what it means to "hear the child." Listening becomes an ethical act, not a procedural step.

Comparative evidence supports this diagnosis. Bunting et al. (2018) show that, despite operating under the same statutory framework, safeguarding systems across the United Kingdom have evolved toward increasingly investigative models. England, for instance, now investigates around one in five referrals, twice the rate of Northern Ireland, and shows a marked rise in cases classified as emotional abuse. Yet outcomes for children have not improved correspondingly. As Bunting et al. (2018, p.1168) note, "risk identification has

outpaced relationship-building," producing a system that is highly responsive to referral data but less capable of sustained relational engagement. TJ helps explain why: where law measures success by throughput rather than trust, procedure expands even as care contracts.

The tradition of relational justice deepens this therapeutic reading by grounding law in the texture of human connection. Writers such as Duff (2003), King (2008) and Nedelsky (2011) argue that justice does not arise solely from the correct application of rules but from the quality of the relationships through which those rules are enacted. Law's legitimacy depends on trust within relationships of unequal power. In safeguarding, those asymmetries are pronounced, between the state and family, the professional and the child. *Luka* gives those asymmetries an emotional vocabulary. The neighbours hear "some kind of trouble, some kind of fight," yet their response is silence. Their restraint is presented as civility, but it becomes complicity.

From a relational perspective, that distance is the real failure. Where power is uneven, sensitivity rather than neutrality creates legitimacy. The relational and therapeutic projects converge on this insight: that legality without empathy becomes administration. Both traditions reject the atomistic individualism that underpins much welfare law. They begin from the recognition that people are constituted through relationship, and that law's role is to preserve those relational bonds rather than merely to manage risk.

In safeguarding, this means that state intervention should feel like conversation rather than withdrawal. The duty to hear proposed in this article synthesises these traditions. It reimagines protection as a relational act of attention, where listening functions as recognition and participation becomes the foundation of lawful authority. Vega's narrator's repeated insistence, "just don't ask me what it was," captures the tension at the heart of this duty. It is both a plea for privacy and a critique of a world that asks without hearing. When the lyrics later conceded, "yes, I think I'm okay," they become a form of emotional self-defence, the language of endurance mistaken for safety. For TJ, these lines become jurisprudential evidence, proof that a system can fulfil its formal duties yet still fail to hear.

2.2 The politics and limits of Therapeutic Jurisprudence

To suggest that law should be therapeutic is to invite resistance. Critics argue that TJ risks turning adjudication into counselling and empathy into evidence (Nolan, 2009; Casey, 2014). Yet this critique misreads TJ's ambition. TJ does not call for sentimental law; it demands that legal authority account for its emotional effects. The issue is not whether law feels, but whose feelings its procedures sustain.

Within safeguarding, this question is concrete rather than theoretical. English law already encodes emotional concepts such as welfare, harm, and safety, yet delivers them through bureaucratic form. The Children Act 1989 enshrines the child's welfare as paramount, while the Domestic Abuse Act 2021 recognises children who "see, hear or experience" abuse as victims. However, these statutes depend on the interpretive work of professionals who decide what counts as being heard. Vega's narrator shows what happens when those decisions fail. "Just don't ask me what it was," *Luka* pleads, anticipating the kind of questioning that exposes without protecting. The law's form exists, but its practice withholds recognition.

TJ must also confront its own limits. Its focus on dignity and validation sometimes assumes a universal subject whose experience of care is culturally neutral. Yet research on child protection demonstrates that credibility is stratified. The voices of children from marginalised or racialised backgrounds are often discounted (Featherstone, Morris and White, 2021). What counts as therapeutic for one participant may be coercive for another. A duty to hear must therefore be intersectional, attentive to the social hierarchies that shape who is believed and who is dismissed as noise.

Finally, TJ's optimism about institutional reform must be tempered by realism. Safeguarding operates within audit cultures and chronic underfunding. Listening is constrained by caseloads, targets, and defensive practice. To insists that law should "hear" risks sounding naïve unless it acknowledges these structural pressures. Yet TJ retains diagnostic value. It reveals how procedural compliance can become a moral alibi. A case conference may tick every statutory box and still reproduce *Luka's* silence. In this sense, TJ functions less as a reform programme than as a jurisprudential lens that exposes where law's emotional literacy has failed.

2.3 Towards a jurisprudence of care

Reimagining safeguarding through TJ does not import therapy into law; it restores care to its doctrinal place. Section 17 of the Children Act 1989 imposes a duty to "safeguard and promote the welfare" of children in need. Welfare in this sense already includes emotional and psychological safety, even if practice reduces it to physical protection. A therapeutic reading simply insists that welfare must be felt as well as declared.

The proposed duty to hear emerges from this synthesis of TJ and safeguarding doctrine. It transforms investigation from fact-finding into relationship-building. To hear a child is not merely to record a statement but to create the conditions for disclosure, to replace *Luka's* "I think I'm okay" with an environment where honesty is safe. In doctrinal terms, this reframes the s. 47 of the Children Act 1989 as a relational obligation. Professionals must design processes that protect without silencing.

This jurisprudence of care does not weaken legality; it strengthens it. Law's authority depends on its ability to recognise the human beings it governs. Listening, in this sense, is an act of justice. It converts statutory language into lived protection. *Luka* reminds us that a system may exists, policies may be written, but until its subjects feel heard, legality remains only half alive.

3. "Just don't ask me what is was": *Luka* as a jurisprudential text

Read through a therapeutic jurisprudence lens, *Luka* operates as a form of jurisprudential evidence about how law is felt and experienced. TJ's central claim, that legal processes should be evaluated by their psychological and emotional effects on those subject to them (Wexler 1990; Winnick 2003), invites attention to the song not as metaphor, but as data. *Luka* charts the conditions under which disclosure becomes perilous and silence becomes a protective strategy. The child's repeated insistence on minimisation ("It wasn't that bad") and deflection ("Just don't ask me what it was") reflects a well-documented dynamic in safeguarding

practice: children frequently avoid reporting harm when the anticipated consequences, disbelief, escalation, or retaliation, seem more threatening than endurance.

Situated against this, the doctrinal question becomes sharper. Contemporary safeguarding regimes, including s. 47 Children Act 1989 enquiries, the statutory guidance in *Working Together to Safeguard Children* (Department for Education 2023), and the Domestic Abuse Act 2021 recognition in s. 3 that children who "see, hear or experience" abuse are victims in their own right, all presuppose that systems can elicit and validate a child's account. *Luka*, however, illuminates the limits of that assumption. It reveals that the capacity to speak is neither merely evidential nor procedural, it is relational, contingent, and deeply shaped by fear. If TJ is taken seriously, then the question for English law is whether current duties genuinely create conditions in which voice is possible, or whether, despite good intentions, they continue to reward quiet endurance.

3.1 Voice under constraint: credibility as performance

"I think it's 'cause I'm clumsy… I try not to talk too loud." The lyric is a child pre-editing their own testimony. TJ explains why. Safeguarding interviews often prize composure and consistency as proxies for credibility, even though trauma commonly produces fragmented, delayed, or affect-flat accounts (Bunting et al., 2018). The result is a perverse incentive: the child must sound reasonable to be believed. That legal preference for tidy narrative appears again in "Yes, I think I'm okay." It read as self-protection, not reassurance.

The Supreme Court in *Re W (Children)* [2010] UKSC 12 required judges to assess individually whether a child should give evidence, rejecting any blanket presumption against participation. In principle, that marked a shift toward inclusions; in practice, in left the manner of inclusion to professional discretion. Guidance such *as Working Together to Safeguard Children* (Department for Education 2023) similarly affirms that children's wishes and feelings must be taken into account, yet offers little on the emotional conditions that make genuine participation possible. TJ reframes that gap. It treats the quality of listening as integral to legality itself. A process cannot be therapeutic, or just, if it rewards those who sound adult and punishes those who sound afraid. By equating credibility with composure, the system imposes an anti-therapeutic pressure to perform coherence.

This problem is intensified by what James (2007) and Komulainen (2007) describe as the ambiguity of "the child's voice." Both argue that adult systems, legal, educational, or welfare, decide when and how a child may speak, and to what effect. What appears as empowerment can reproduce control. Safeguarding procedures, framed as participatory, often structure the child's contribution through professional categories of risk and reliability. *Luka* captures that distortion. The child's politeness, "yes, I think I'm okay," sounds voluntary but is conditioned by fear. TJ clarifies the point. A process cannot claim to here if it defines in advance the acceptance tone of speech. Law's legitimacy depends not on eliciting words but on enabling truthful voice.

3.2 Silence as risk management: when evidence eclipses safety

“Just don’t ask me what it was.” The lyric captures a survival tactic, not defiance. TJ reads this restraint as a rational response to a hostile environment. Research on child abuse disclosure consistently shows that reluctance to speak often stems from a fear of escalation, disbelief, or losing control of the situation (Pipe et al., 2007). Safeguarding law appears to account for this by placing investigative responsibility on professionals rather than children. Under s. 47 of the Children Act 19899, local authorities must make enquiries whenever there is reasonable cause to suspect significant harm. In principle, that duty transfers the burden from the child to the state. In practice, however, investigations still depend heavily on verbal disclosure and compliance with procedural checklists (Sidebotham et al., 2016; Featherstone, Morris and White, 2014). The system “listens” for facts that fit evidential categories but misses what TJ treats as legally meaningful affective data: hesitation, deflection, minimising.

The neighbours who “hear something late at night… some kind of trouble, some kind of fight” but “don’t ask” model the same pattern: awareness without recognition. In professional safeguarding, this becomes a bureaucratic reflex, recording concern while avoiding emotional engagement. The legal process thereby fulfils its statutory form yet withholds the relational safety that makes disclosure possible. TJ exposes this as an anti-therapeutic contradiction: a structure designed to protect the child reproduces the conditions that silence them.

Purtle’s (2018) systematic review of trauma-informed organisational interventions illustrate this pattern at an institutional level. Many agencies adopt trauma language but fail to alter the hierarchies and routines that perpetuate emotional distance. Training programmes may heighten awareness of trauma yet leave staff without authority or resources to respond differently. *Luka* echoes this institutional paralysis. The neighbours “hear something late at night” but remain passive; awareness substitutes for engagement. In safeguarding, these dynamic produces what TJ identifies as anti-therapeutic compliance, procedures that acknowledge vulnerability without creating conditions for safety. Law listens, but only to itself.

Within a therapeutic reading, *Luka’s* silence would be treated as a signal, not as the absence of evidence. The duty under s. 47 of the Children Act 1989 is investigatory, not merely documentary, and its fulfilment should be measured by whether the enquiry creates space for a child to speak safely, not simply by whether forms are complete. Law’s task, in TJ terms, is to convert procedural listening into protective hearing.

3.3 Emotional neutrality as harm: the sound of procedure

Professional neutrality is often presented as a safeguard against bias, but in the context of child protection it can itself become a form of harm. TJ reframes neutrality not as a virtue but as an emotional design. It asks whether the tone and structure of professional encounters convey safety or withdrawal. Trauma research indicates that what professionals consider neutral or calm can be perceived by children as distant or dismissive. This misalignment can inadvertently discourage disclosure and undermine emotional safety during safeguarding enquiries.

Early TJ scholarship identified precisely this problem within child protection practice. Sales and Shapiro (1997) observed that adversarial or affect-neutral approaches, though intended to ensure fairness, routinely retraumatise children and families by reproducing the emotional

distance of the original harm. They proposed a model of practice rooted in participation, validation, and respect, principles later formalised within non-adversarial justice frameworks (King, et al., 2014). *Luka* captures the enduring gap between these ideals and professional reality: a legal culture that equates calmness with control, and control with care.
This critique matters doctrinally. Section 17 of the Children Act 1989 requires local authorities to "safeguard and promote the welfare" of children in need. *Working Together to Safeguard Children* (DfE, 2023) interprets that duty as requiring professionals to understand children's wishes and feelings. A TJ reading insists that "welfare" in this context cannot be satisfied by procedural correctness alone; it must include the felt experience of being heard and believed. Emotional neutrality that discourages openness undermines both statutory purpose and psychological safety. It meets the letter of s. 17 but violates its spirit. In TJ terms, this is an anti-therapeutic compliance. The law appears to function, yet its form of listening replicates the harm it seeks to cure.

Recent empirical syntheses support this claim. Bryson at al. (2021) argue that trauma-informed care succeeds not through policy statement but through what they call the emotional consistency of everyday encounters. Stability, warmth, and predictability, rather than procedural detachment, build therapeutic environments. Transposed into safeguarding law, this suggests that the statutory duty to promote welfare requires attention to affect as well as action. *Luka's* steady tempo and restrained delivery sonically reproduce that professional calm which, to the listener, feels like abandonment. TJ reframes this as an evidential issue: emotional neutrality may satisfy procedural rationality yet undermine the legal purpose of protection.

3.4 Recognition withheld: witnessing without action

"They only hit until cry… after that you don't ask why." Vega's lyric captures the moment when explanation collapses into endurance. The neighbour's silence, "just don't ask me what it was," keeps the peace of the corridor but leaves the child upstairs unprotected. The scene mirrors a broader legal dilemma: what law calls recognition can, in practice, amount to observation without response.

TJ locates this failure in the absence of respect. Respect, in TJ terms, is not courtesy but moral recognition. The willingness to see another person as a subject whose experience has weight (King et al., 2014). The Domestic Abuse Act 2021 appears to embody that value by recognising in s. 3 that children who "see, hear or experience" domestic abuse are victims in their own right. Yet, as Featherstone, Morris and White (2014) observe, this recognition often ends at the level of statute. In everyday practice, it risks being reduced to tick-box category that records harm without transforming the interaction between professional and child. The effect is a bureaucratic form of empathy: the law notices but does not feel.

Judicial doctrine reveals the same tension. Decisions such as *Re H (Minors)* [1996] AC 563 and *In re B (Children)* [2008] UKHL 35 confirm that the civil standard of proof, balance of probabilities, applies in all child protection proceedings. The rule guards against arbitrariness but can foster caution when evidence is fragmentary or delayed, as it often is in abuse cases. In those moments, the system's demand for narrative clarity collides with the survivor's need for safety. TJ does not dispute evidential fairness; it exposes how procedural restraint can

become moral distance. The child who minimises or deflects to preserve safety is treated as unreliable precisely because they behave as the law's own logic predicts.

Recognition, therefore, must be operational rather than symbolic. A statutory label of victimhood is only meaningful if it reshapes how professionals listen and respond. In therapeutic terms, that means translating recognition into validation, creating encounters in which belief precedes proof and empathy precedes classification. Without that transformation, the corridor stays quiet, the flat remains unsafe, the law's promise of protection is reduced to formality.

3.5 Hearing as method: toward a TJ-consistent inquiry

TJ does not offer a checklist; it offers an ethic. When applied to child protection, that ethic asks whether the processes of investigation respect what King et al. (2014) describe as voice, validation, and respect. Not as abstract virtues but as legal conditions of safety. An inquiry under s. 47 of the Children Act 1989 that satisfies procedural duties yet fails to create psychological safety cannot be regarded as lawful in a substantive sense.

Gil's (1975, p. 347) value-based definition of child abuse reinforces this point. He characterised abuse as "inflicted gaps between circumstances that facilitate children's optimal development and their actual conditions of life." On that account, legally compliant yet emotionally unsafe processes constitute institutional abuse. They perpetuate structural neglect under the guise of care. TJ translates this critique into legal ethics: hearing becomes a test of whether procedure closes or widens those inflicted gaps.

Voice, in this context, concerns the form of participation. A child should be able to narrate their experience in their own language, at their own pace, without their emotional register being used as a measure of credibility. Plotnikoff and Woolfson (2015) show that children's evidence is most reliable when they feel a sense of control over how their story is told. Yet safeguarding practice often inverts that logic: coherence and calmness taken as truth, distress or hesitation as doubt. *Luka* exposes that inversion. The child speaks clearly, too clearly, because only composure feels safe. The voice that the law rewards is the one least likely to reveal the full extent of harm.

Validation refers to how professionals respond to those accounts. When a child explains that they "walked into the door again," the question is not whether this is factually correct but what emotional purpose the explanation serves. Trauma-informed studies interpret such phrases as "safety talk," ways of maintaining control in unsafe settings (Bunting et al., 2019). A TJ consistent inquiry would treat these statements as invitations for relational exploration rather than as tests honesty. To dismiss them as implausible is to miss their function. They are forms of speech that can keep a child alive.

Respect, finally, requires attention to context. The physical and temporal setting of an interview, the room, the time of day, the presence or absence of trusted adults, communicates as much as the questions themselves. *Working Together to Safeguard Children* (Department for Education, 2023) identifies the need for sensitivity to children's wishes and feelings, but TJ reframes this as a matter of legality rather than discretion. An inquiry conducted in a space

that amplifies fear or exposure cannot produce a therapeutic or just outcome, regardless of its procedural correctness.

Clinical literature supports this jurisprudential insight. McDonald (2007) notes that emotional abuse is often invisible precisely because it occurs through patterns of interaction, withdrawal, fearfulness, minimising, that resemble compliance. The same logic applies to safeguarding law. Unless professionals interpret relational cues as evidence, not noise, the process reproduces emotional unavailability in institutional form. A TJ consistent hearing therefore requires a multidisciplinary attentiveness to affect as data, not deviation.

Viewed through these principles, Luka becomes a jurisprudential case study in failure. The neighbours who "hear something late at night" but "don't ask" represent a form of institutional restraint often misread as professionalism. Their silence is the bureaucratic equivalent of the closed question. The law may record that an enquiry occurred, but the child's truth remains unheard. Under TJ, such an investigation cannot be called successful, however immaculate its paperwork or compliant its audit trail. Hearing, in this sense, is both a moral and a legal act.

3.6 Interim synthesis: the law that listens

Across these readings, Luka reveals how legality can exist without empathy. It shows a system that asks but does not hear, investigates but does not protect. TJ clarifies the pattern, composure mistaken for credibility, silence mistaken for consent, neutrality mistaken for care, and observation mistaken for recognition. Each misinterpretation transforms a legal safeguard into an instrument of distance.

Yet the doctrinal foundation for a different approach already exists. Section 17 of the Children Act 1989 defines welfare broadly enough to include psychological and emotional safety. Section 47 imposes a duty to investigate, but nothing in its texts confines that duty to procedural compliance. Section 3 of the Domestic Abuse Act 2021 recognises children who "see, hear or experience" abuse as victims, offering a statutory basis for understanding listening as protection. Read together, these provisions provide the legal architecture for what this article terms the duty to hear. Under that duty, the legitimacy of a safeguarding process would be judged not only by the correctness of its decisions but by the emotional experience it creates for the child.

Luka therefore functions as both mirror and critique. It reflects how law sounds when its form is correct, but its feeling is absent, and it invites an alternative jurisprudence grounded in attention and care. Part four turns to this doctrinal dimension directly, considering how courts and agencies might interpret existing statutory duties in ways that make the duty hear an enforceable principle of child protection.

4. Doctrine as dialogue: how English safeguarding law hears

Safeguarding law presents itself as a system designed to listen. Section 17 of the Children Act 1989 requires local authorities to "safeguard and promote the welfare" of children in need. Section 47 imposes a duty to make enquiries when there is reasonable cause to suspect

significant harm. Section 3 of the Domestic Abuse Act 2021 defines children who "see, hear or experience" domestic abuse as victims in their own right. *Working Together to Safeguard Children* (Department for Education, 2023) proclaims that "the child's voice must be central to all practice." The legal architecture therefore appears comprehensive, coherent and humane.

Yet TJ exposes a fundamental contradiction. These provisions speak the language of empathy while operating through procedures that often reward restraint and penalise distress. Law promises to listen but frequently does so through bureaucratic rather than relational means. The central question for this section is therefore not whether the law hears, but how it listens and what that listening feels like to the child within it.

4.1 Voice in doctrine: participation as procedure

The child's participation sits in a paradox within English safeguarding law. In *Re W (Children)* [2010] UKSC 12, the Supreme Court rejected any blanket rule against children giving oral evidence, requiring a case-specific balancing of potential harm and evidential fairness. The move is inclusive in principle, but the justification is largely procedural: speech is valued for fact-finding rather than for its potential to restore agency or dignity. Emotional risk is acknowledged yet its management is left to judicial and professional discretion (*Re W (Children)* [2010] UKSC 12).

Formal TJ perspective, this discretion is structurally anti-therapeutic. It locates the decision within the professional rather than the relational domain. *Re W* constructs the child's voice as a potential hazard, something that must be managed rather than empowered. Procedural fairness displaces psychological safety. The ruling therefore exposes that Wexler (2014) calls *law's emotional economy*: formal neutrality that masks relational distance.

Working Together to Safeguard Children (Department for Education, 2023) repeats the same logic in policy form. The guidance instructs professionals to "seek the child's views" but provides no mechanism for evaluating the quality of that listening. TJ insists that listening is not an act of data collection but a condition of legitimacy (King et al. 2014). Where participation is reduced to consultation and consultation is paperwork, the system performs listening while maintaining control.

Luka's opening line, "My name is Luka, I live on the second floor," mirrors this bureaucratic performance. It introduces, identifies, and categories the speaker, yet the substance of suffering remains deferred. Like the social worker's checklist, the statement satisfies procedure but withholds intimacy. The song's composure becomes an allegory of how safeguarding law hears. Formally, politely, and at a distance.

4.2 Proof, credibility and the burden of coherence.

Evidential doctrine amplifies this structural detachment. In Re H (Minors) [1996] AC 563, the House of Lords held that the civil standard, the balance of probabilities, applies in all child-protection proceedings. The Court rejected the notion of a heightened standard for serious allegations, reasoning that "the inherent probability of an event is a matter to be taken into

account" (Lord Nicholls *Re H (Minors)* [1996] AC 563, 586). Twelve years later, *Re B (Children)* [2008] UKHL 35 reaffirmed this position. The decisions aimed to ensure fairness and consistency.

However, empirical studies suggest that these doctrinal clarifications have not dispelled the culture of disbelief that pervades child protection. Sidebotham at al. (2016) found that local authority casework continues to rely heavily on verbal disclosure and chronological coherence. Yet trauma research demonstrates that fragmentation and delay are integral to traumatic memory (Pipe et al. 2007). The evidential system therefore privileges precisely those forms of speech least accessible to traumatised children.

TJ translates this into a question of voice and validation. When law equates credibility with composure, it imposes an anti-therapeutic burden. The child must narrate the pain in an orderly manner to be believed. Vega's lyric, "yes I think I'm okay," illustrates this distortion: emotional control becomes the price of credibility. Under a TJ reading, *Re H (Minors)* [1996] AC 563 and *Re B (Children)* [2008] UKHL 35 inadvertently institutionalise the very emotional restrain that *Luka* performs. Procedural fairness is achieved, but therapeutic justice is denied.

This evidential bias has doctrinal consequences. Section 47 enquiries hinge on "reasonable cause to suspect" harm. If professional interpret uncertainty or minimisation as absence rather than symptom, the threshold for action rises, de facto, above the statutory standard. TJ reframes this as a failure of hearing. The system listens for narrative clarity rather than relational cues. A legally adequate but therapeutically deficient inquiry therefore becomes possible.

4.3 Recognition in statute: from symbol to substance

Section 3 of the Domestic Abuse Act 2021 represents a major shift in English. Safeguarding law. For the first time, it recognises that a child who "sees, hears or experiences" domestic abuse is a victim in their own right. The reform's intention is unmistakably therapeutic. It reframes exposure from collateral damage to direct harm. In TJ terms, it gestures towards respects, the recognition of the child as a subject of law rather than a witness to another's suffering (King et al. 2014).

Yet this symbolic advance risks remaining performative. As Featherstone, Morris and White (2021) argue, implementation occurs within an audit culture dominated by assessment tools, referral thresholds and data dashboards. These instruments quantify awareness but rarely cultivate relational care. What results, they suggest, is procedural empathy, a bureaucratic simulation of concern that notices without engaging. The statutory label of "victim" therefore secures recognition in law but not necessarily in experience.

A TJ reading exposes this disjunction. Wexler (1990) cautions that law's affective gestures can be anti-therapeutic when they displace real relational change. Respect, in the TJ sense, is not symbolic affirmation but enacted attentiveness, the tone, timing and responsiveness of professionals in contact with the child. A social worker who records that a child "has been heard" may fulfil the statute while leaving that child emotionally untouched. *Luka's* neighbours dramatise the same paradox. They hear noise, they note disturbance, yet they do

not intervene. On an institutional scale, that is what s. 3 risks reproducing, a form of listening that satisfies procedure but fails protection.

4.4 From recognition to relational: locating the doctrinal gap

Taken together, participation doctrine, evidential reasoning and statutory recognition create an apparent architecture of child-centred safeguarding. Children are invited to speak, their accounts are assessed under a standard of civil proof, and their status as victims is acknowledged in law. Yet none of these frameworks require decision-makers to establish the relational conditions under which a child can safely be heard. The law recognises the child but does not guarantee the encounter in which that recognition becomes real.

This is the doctrinal gap the article identifies. The Children Act 1989 requires local authorities to "safeguard and promote the welfare" of children in need, but welfare is interpreted predominantly through procedural activity rather than emotional safety (Featherstone, Morris and White 2021). The Domestic Abuse Act 2021 acknowledges that children experience harm directly, yet implementation can revert to category creation without relational engagement. Case law on participation and proof affirms fairness and neutrality, but neutrality can reproduce distance rather than trust. The result is a system in which the child is heard as evidence but not heard as a person.

From a TJ perspective, the key omission is hearing: the active, relational practice of enabling voice, validation and respect (Wexler 1990; King et al.2014). Without hearing, safeguarding risks becoming an audit of speech rather than a response to suffering. The law collects words but does not listen to what they mean.

5. The duty to hear as a practical ethic

The preceding sections have shown that safeguarding doctrine acknowledges that the child's voice should be heard, yet it remains unclear about the conditions under which the voice acquires legal meaning. The child is recognised as a subject of concern, but the relational texture of listening, includes the manner, pace and emotional stakes of the encounter, lies outside the formal scope of enquiry. *Luka* makes this absence apparent. The song narrates harm in a tone that protects as much as it reveals. The lyric is balanced, almost conversational, as though the child has already learned that survival requires minimising the disruption their suffering might cause to others. The neighbours hear the disturbance but remain distant from its significance. In safeguarding, the risk is that professional processes reproduce this form of hearing: registering speech without receiving testimony. Part Five therefore develops the duty to hear as a practical ethic that can reorient statutory interpretation and professional guidance toward the child as a subject whose voice carries meaning even when that meaning is quiet, hesitant or restrained.

5.1 Hearing as Interpretation

The Children Act 1989 establishes welfare as the organising principle of child protection, but "welfare" remains conceptually broad and requires interpretation in practice. Welfare has never been limited to the prevention of physical harm. It encompasses the child's emotional,

psychological and relational security, as recognised in the welfare checklist and in subsequent case law emphasising the child's subjective experience as part of welfare assessment (Eekelaar 215; Herring 2014). To promote welfare is therefore not only to intervene when harm has occurred, but to create conditions in which the child's experience can be expressed, perceived and made actionable with the protective process. In this sense, hearing is integral to welfare, not ancillary to it. A safeguarding intervention that obtains information but cannot receive its significance cannot be said to recognise the child's lived position.

Section 47 requires an enquiry when there is reasonable cause to suspect significant harm. However, the fulfilment of this duty depends upon how the enquiry is conducted. If the relational conditions of the encounter replicate the dynamics under which harm was endured, the child may calculate that disclosure increases danger. Silence, minimisation or composure may become rational strategies of protection rather than indications of safety (Cossar, Brandon and Bailey 2014; Leeson 2010). Luka clarifies this dynamic. The song's measures tone is not evidence that harm is slight, but that harm has made itself bearable by shaping how it may be spoken. The listener who expects distress to appear as urgency may fail to recognise that endurance can sound calm.

The duty to hear therefore reframes statutory interpretation. An enquiry cannot be regarded as substantively adequate merely because it has formally occurred. It must be undertaken in conditions that allow the child to speak without reperformance of danger. This is not a therapeutic reconstruction of safeguarding, nor is it an appeal to empathy. It is a clarification of what it means for an enquiry to be capable of fulfilling its statutory purpose. If the child's voice is structurally inhibited by the conditions of the encounter, the enquiry cannot access the evidence upon which protection depends. To hear the child is thus part of the legal meaning of welfare and not a discretionary enhancement to it.

5.2 Hearing as evidential judgment

The standard of proof in care proceedings remains the balance of probabilities, as confirmed in *Re H (Minors)* [1996] AC 563 and reaffirmed in *Re B (Children)* [2008] UKHL 35. The duty to hear does not alter this threshold. Instead, it interrogates the assumption about how truth is recognised that often guide evidential reasoning in safeguarding contexts. Traditional credibility assessments tend to privilege narrative coherence, emotional expressiveness and chronological clarity. Yet research into child testimony consistently demonstrate that traumatic experiences are frequently disclosed in non-linear, partial and emotionally flattened forms (Pipe er al. 2007; Bunting et al. 2018). A child may describe serious haem in the same tone they might describe an ordinary day, not because the harm is insignificant, but because composure has become necessary to manage its effects (Cyr et al. 2012).

To interpret such composure as evidence of stability is to misrecognise a coping strategy as a lack of distress. This confusion reflects a deeper epistemic problem: evidential judgment often assumes that trauma reveals itself through visible disruption. *Luka* unsettles this assumption. The line, "yes, I think I'm okay" appears to offer reassurance, yet withing the narrative of the song it functions as a gesture of containment. The utterance protects the speaker from the risks associated with disclosure. When heard without reference to the relational conditions

that shape it, the statement could easily be misread as resilience or acceptance. When heard within the reality of violence, it is a signal of endurance sustained at cost.

The duty to hear therefore requires evidential reasoning to attend to how a statement is produced, not only to what is said. Tone, pacing, repetition and hesitation are not incidental features but part of the communicative content of testimony. To ignore them risks replicating the neighbours' listening in *Luka*: hearing the words but remaining unaffected by what they signify. This is not a softening of legal standards. It is a *more accurate* application of the balance of probabilities, which already permits findings to be made on the basis of contextualised inference rather than isolated linguistic clarity.

Moreover, courts have recognised that credibility must be judged against the emotional and developmental context of the child. As Munby LJ observed in *Re W (Children)* [2010] UKSC 12, the absence of expressive distress does not undermine the seriousness of reported harm; communication must be understood in its situational and relational context. Similarly, empirical studies show that children often disclose through patterned understatement, signalling discomfort through subtle cues rather than explicit detail (Cossar, Brandon and Bailey 2014). The duty to hear formalises this insight within evidential judgment. It holds that truth may appear quiet when spoken from within the conditions that require quietness to survive.

Hearing, in this evidential sense, is not the act of believing without inquiry. It is the commitment to interpret the child's words in light of the relational circumstances that structure their possibility. A safeguarding process that evaluates testimony without regard to its emotional context risks mistaking adaptation for consent and endurance for safety. The duty to hear therefore clarifies that evidential judgement must be relationally informed if it is to fulfil the statutory aim of recognising and responding to harm. It reframes the assessment of credibility not by lowering standards, but by aligning them with what is known about how trauma is spoken.

5.3 Hearing in professional guidance

Working Together to Safeguard Children (Department of Education 2023) places emphasis on ascertaining "the child's wishes and feelings" as part of assessment and planning. Yet the guidance does not explain how the conditions of the encounter shape what a child is able, willing or safe to express. In practice, this can lead to an assumption that eliciting the child's voice is an act of neutral information gathering, when in reality the capacity to speak depends upon the interpersonal stance of the professional and the emotional climate in which the conversation occurs. Research into children's participation in safeguarding processes consistently demonstrates that children do not disclose in response to open questions alone. They disclose when they feel safe, believed and recognised as agents in the encounter (Cossar, Brandon and Bailey 2014; Leeson 2010).

This matters because professional guidance is one of the primary means through which statutory duties are enacted. If guidance constructs listening as the extraction of narrative content, it risks reinforcing the very dynamics of caution and containment that *Luka* reveals. The song's quiet composure is not the absence of distress but the adaptation required to

survive it. When safeguarding adopts a stance of procedural neutrality, the child may perceive the encounter as one in which emotional self-protection remains necessary. The result is that the child speaks, but the meaning of the speech does not travel. Words are recorded, but testimony is not received.

A practical ethic of hearing would therefore require *Working Together to Safeguard Children* (Department of Education 2023) to address the relational dimension of participation. This does not entail prescribing a single interviewing method or therapeutic style. Rather, it would recognise that listening is purposeful when it is oriented toward *recognition* rather than mere documentation. This involves attending to features of communication that fall outside verbal content, including pauses, hesitations, the quality of calmness and the strategies of minimisation that children may employ to maintain emotional equilibrium (Featherstone, Morris and White 2021; Ferguson 2017). These communicative forms must not be treated as peripheral. They are part of the child's account of harm.

To embed hearing in guidance is therefore to clarify the interpretive stance professionals are expected to adopt. It holds that presence is evidentially meaningful. A child may not provide a linear or elaborated narrative, but the affective register in which they speak can still constitute disclosure. Recognising this does not shift safeguarding into therapeutic practice. It aligns safeguarding with its own protective rationale. The child's voice is not simply something to be collected. It is something that must be received.

5.4 Embedding the duty to hear in practice and policy

If the duty to hear is to move beyond ethical aspiration, it must be translated into the everyday practices through which safeguarding is enacted. The challenge is structural as much as interpretive: law and policy must create the conditions in which listening becomes part of legality rather than a discretionary virtue. The *Working Together to Safeguard Children* (Department for Education 2023) guidance already frames the "voice of the child" as a statutory expectation, yet it remains largely procedural, measured through documentation rather than felt experience. Ofsted's thematic review of local authority social work (Ofsted 2022) similarly found that children's voices were "recorded but rarely explored," with professionals prioritising compliance over dialogue. The duty to hear requires that this procedural listening be replaced by relational engagement, an approach consistent with the trauma-informed and relational-justice frameworks that underpin Therapeutic Jurisprudence (King et al. 2014; SAMHSA 2014).

From a doctrinal standpoint, the duty to hear can be embedded through an interpretation of s. 47 of the Children Act 1989 that treats the emotional safety of the enquiry as integral to its legality. Section 47 requires local authorities to "make such enquiries as they consider necessary," a formulation that grants broad discretion but does not define the quality or nature of those enquiries. Courts have emphasised that statutory duties under the Act must be exercised in a manner compatible with the child's welfare as the paramount consideration, a point underscored in *Re H (A Child) (Parental Responsibility: Vaccination)* [2020] EWCA Civ 664, where the Court of Appeal confirmed that welfare encompasses a child's emotional and relational needs as well as their physical protection. A Therapeutic Jurisprudence informed interpretation would regard the *conditions* of the enquiry, including tone, pacing and relational safety, as part of what is "necessary" for the statutory duty to be meaningfully

fulfilled. Where the structure or atmosphere of an enquiry inhibits disclosure or reproduces the emotional constraints of harm, the duty under s. 47 is only partially discharged. This reading aligns with the relational understanding of welfare recognised by the Supreme Court in *R (SC, CB and 8 Children) v Secretary of State for Work and Pensions* [2021] UKSC 26, which held that welfare assessments must take account of the lived realities of children's circumstances rather than abstract procedural compliance. Under this approach, hearing becomes not an optional sensitivity but a substantive requirement for legal adequacy.

Operationalising the duty to hear also requires reform at the level of professional training and accountability. Research on child-protection practice consistently shows that empathic communication improves both accuracy and trust in safeguarding encounters (Munro 2011; Bunting et al. 2019). The Independent Review of Children's Social Care (MacAlister 2022) concluded that a "relational turn" in practice, grounded in stability, curiosity and compassion, was essential to restore confidence in the system. Embedding the duty to hear would formalise that turn, positioning empathy not as sentiment but as professional competence. Local Safeguarding Partnerships could incorporate relational-listening indicators within quality-assurance frameworks, evaluating not only whether the child was consulted but whether the process was experienced as safe and validating.

Cultural artefacts such as Suzanne Vega's *Luka* (A&M Records 1987) help to visualise what such reform seeks to prevent: a pattern of procedural attention that mistakes composure for protection. In the song, the neighbours' restraint is socially sanctioned silence, the performance of civility that preserves order at the cost of recognition. The professional equivalent is the detached interview that documents suffering without engaging its meaning. By reading Luka as jurisprudence, the duty to hear gains imaginative force: it becomes possible to ask how law might sound if it acknowledged vulnerability without demanding performance. The lyric's quiet endurance becomes a diagnostic tool for legal reform, revealing where systems continue to prize evidence over empathy.

Embedding this ethic in statutory guidance would not transform safeguarding into counselling. Rather, it would clarify that procedural fairness depends on emotional literacy. The Domestic Abuse Act 2021, s. 3, already recognises children who "see, hear or experience" abuse as victims in their own right; extending this logic, guidance could require that "hearing" be understood as both perceptual and relational. A child's account should be treated as complete only when professionals have ensured that its emotional context has been acknowledged and its meaning validated. This reframing would align English practice with developments in other jurisdictions, such as New Zealand, where the Oranga Tamariki Act 1989, substantially amended in 2017 and 2019, incorporates trauma-informed, child-centred engagement principles into statutory duties (Henaghan 2020).

Finally, accountability mechanisms must evolve to reflect this jurisprudence of care. Inspection frameworks could include qualitative feedback from children on whether they felt believed and respected. Judicial review of safeguarding decisions could recognise procedural unreasonableness not only where inquiries are omitted but where they are conducted in ways that foreseeably silence the child. Such an approach would operationalise Wexler's (1990) insight that the legitimacy of law depends on its psychological consequences. Hearing, in this sense, becomes evidence of legality itself.

Conclusion: Toward a legally literate form of listening

The analysis developed in this article has shown that English safeguarding law contains the vocabulary of protection but often lacks the relational practices that give that vocabulary meaning. Statutory duties to investigate and promote welfare are drafted in generous terms, yet their realisation depends on encounters shaped by tone, pace and emotional availability. Therapeutic Jurisprudence draws attention to these affective dimensions not as ethical embellishments but as conditions under which legality can be experienced as protective rather than procedural. Vega's *Luka* has served throughout as a jurisprudential companion, revealing how silence, composure and minimisation can mask harm when systems know how to ask but not how to hear.

Safeguarding doctrine already recognises the importance of a child's wishes and feelings, yet the legal frame continues to conceptualise listening largely as a matter of information gathering. *Working Together to Safeguard Children* (Department for Education 2023) describes participation in procedural terms, and judicial approaches to credibility frequently privilege coherence and consistency even where trauma research predicts fragmentation (Pipe et al. 2007; Bunting et al. 2018). The effect is an evidential preference for the very forms of calm disclosure that Luka dramatises as strategies of endurance. This is not a doctrinal failure but a relational one. The law hears words, but not always the conditions under which those words are spoken.

The duty to hear proposed in this article reframes the legal significance of listening. It is not a call to therapeutic intervention but a clarification of what it means for law to fulfil the functions it already sets for itself. A s. 47 enquiry that inhibits disclosure cannot meaningfully establish whether a child is suffering or likely to suffer significant harm. An assessment process that interprets minimising or flat affect as unreliability rather than protection misconstrues the relational dynamics of trauma. And a statutory definition that recognises children who see, hear or experience domestic abuse as victims (Domestic Abuse Act 2021, s. 3) demands corresponding interpretive attention to how those experiences shape their capacity to speak.

The implications of this duty extend beyond interviewing techniques. As Henaghan (2020) argues in the context of New Zealand's child-protection law, legal systems must ensure that statutory commitments to children's voices are realised through practice cultures that build trust and stability. English safeguarding law can move in the same direction without legislative overhaul. Professional standards could require that the quality of listening be evaluated as part of legal compliance, judicial review could acknowledge emotional safety as a component of procedural fairness, and inspection frameworks could incorporate children's accounts of how they felt rather than simply what they said. These developments would align domestic practice with existing statutory expectations rather than impose new therapeutic demands.

Luka remains instructive as a cultural text because it gives emotional form to a familiar legal problem: the gap between noticing and recognising, between recording information and receiving testimony. The song's quiet voice reveals how suffering can be articulated in ways that keep the peace of the corridor while leaving the harm intact. Safeguarding processes risk

reproducing that dynamic when listening is approached as a step in an investigative sequence rather than as a relational practice that shapes what can safely be disclosed.

A legally literate form of listening would therefore treat the encounter itself as part of the enquiry. It would recognise that children speak from within webs of fear, loyalty, shame and hope, and that the law's responsibility is not simply to collect statements but to create the conditions in which truth can be articulated without reproducing danger. This is not a departure from the child's welfare as the paramount consideration; it is its realisation.

The argument of this article has been that safeguarding becomes therapeutic not when law offers comfort, but when its processes allow children to be heard without penalty for the ways trauma shapes speech. Listening, understood in this sense, is an act of justice. It transforms statutory language into lived protection, allowing the law to hear what Luka makes audible: that quietness may be evidence of harm rather than its absence, and that protection begins when the child no longer needs to tidy their suffering into something the system will accept.

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