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What social workers talk about when they talk about child care proceedings in the District Court in Ireland

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Abstract (200 words)
Court proceedings are a fundamental and increasingly time-consuming aspect of social work practice. However, to date, there is a relatively modest body of literature considering the experiences of social workers in instituting child care proceedings and giving evidence in court. This paper draws on data gathered as part of an in-depth qualitative study of professional experiences of District Court child care proceedings in Ireland, and presents findings regarding the experiences of social workers in bringing court applications for child protection orders. It seeks to answer two key questions: first, how do child protection and welfare social workers experience the adversarial nature of child care proceedings in the District Court? Second, what are the views of child protection and welfare social workers on the strengths and weaknesses of child care proceedings as a decision-making model for children and young people? The main findings are that social workers expressed significant reservations about the predominantly adversarial model that currently operates in Irish child care proceedings, and about the level of respect that social workers are afforded within the operation of the system.

Keywords
Child care proceedings; child welfare removals; adversarial decision-making; socio-legal studies.

Introduction

As a profession, the work of social workers can be heavily informed by the law, particularly in child welfare and protection. Their job requires them to intrude into the strongly protected sphere of family life with the aim of protecting the rights of vulnerable children. Every decision they make inherently involves an assessment of the rights at stake, the evidence available, and the likelihood of meeting statutory thresholds. In many jurisdictions, social workers spend an increasing proportion

of their time in court, making applications for a variety of orders. The constant necessity for social workers to engage with the law is reflected in a slew of textbooks designed to support social workers in their practice, focusing on law, theory and skills, and aiming to inform social workers about what the law is (see, for example, Brayne & Preston-Shoot 2016; Hamilton 2012). By comparison, there is a much more modest body of literature considering the experiences of social workers in instituting child care proceedings and giving evidence in court. Since court proceedings are a fundamental and increasingly time-consuming aspect of social work practice, it is essential to improve our understanding of how social workers interact with, and perceive the court system.

In many European jurisdictions, many children enter through voluntary, 'negotiated' administrative measures rather than through compulsory decision-making fora such as courts or court-like bodies (see Burns *et al.* 2017a). However, when parents disagree with the social work assessment, or are unable to make the requisite changes to their parenting, or oppose efforts by social workers to protect children from abuse or neglect, some form of court or court-like proceedings are required to break the deadlock and determine what is in the child's best interests. In Ireland, two-thirds of the admissions of children to state care are through the voluntary care pathway (Tusla, Child and Family Agency 2016; Burns *et al.* 2017b). The remaining one-third of involuntary care order decisions are made in the District Court, which is a non-specialist, single judge court, in which child care proceedings are run in a largely adversarial manner (O'Mahony *et al*. 2016a).

This paper explores the knowledge and practice experiences of social workers in bringing court applications for child protection orders. It draws on data from a large qualitative study examining the perspectives of professionals directly involved in these proceedings. The aim of this article is to explore the experiences of social workers in bringing care order applications to the District Court. It seeks to answer two key questions: first, how do child protection and welfare social workers experience the adversarial nature of child care proceedings in the District Court? Second, what are the views of child protection and welfare social workers on the strengths and weaknesses of child care proceedings as a decision-making model for children and young people?

Setting the context

Literature on social workers' experience of child protection court proceedings

Aside from literature aimed at educating social workers on the law, research has begun to emerge from a small number of academics in the United Kingdom (UK) over the last decade that examines the experiences of social workers in preparing for, and attending, court proceedings. A smaller volume of literature, displaying similar findings, may be found in the United States (US) and Australia. This literature has described appearing in court for the first time as "one of the most nerve-racking experiences a children's social worker can face" (Taylor 2007, p. 16), which is a striking statement when one considers the situations that social workers might normally encounter in the field. Studies describe social workers as being perceived as a "semiprofession"; unlike, for example, lawyers or doctors; their expertise lies not in a discrete specialism, but "in those areas where everyone considers themselves an expert – parenting and family life" (Taylor *et al.* 2008, p. 25; see also Van Wormer 1992, p. 121). A consequence of this, is that social workers feel that they are "at the bottom of the court's pecking order" (Taylor 2007, p. 16) and that "social work reports have limited currency in the court arena" compared to reports from guardians *ad litem* and other experts (McKeigue & Beckett 2010, p. 167; see also Beckett 2000; Beckett *et al.* 2007, pp. 59-60; Dickens & Masson 2014, p. 356 and Sheehan & Borowski 2014, p. 105). This is a source of

frustration for social workers, since they can have a strong sense of their own expertise (Taylor *et al.* 2008, p. 26). In fact, in many countries, social workers are highly trained, often to Masters level, and they argue that they get to know and observe children in their homes and less artificial environments compared to other expert witnesses who may meet a child for a very short assessment, often in an office-based environment (Beckett *et al.* 2007, p. 58).

Studies have indicated that the demands made on social workers by court attendance and preparation are considerable, both emotionally and in terms of time, with court time taking from time spent on other front-line tasks (McKeigue & Beckett 2010, p. 163). Notwithstanding this, UK judges often complain that social workers do not prepare thoroughly enough for court and call on them to do more in this regard, creating a danger that "pre-court practice may become less about family support, more about evidence and timescales, less about prevention of proceedings and more about preparation for court" (Dickens & Masson 2014, pp. 364-365 and p. 368; see also Sheehan & Borowski 2014, p. 105). Social workers have criticised the adversarial nature of court proceedings on the basis that the interests of the child can become secondary to who wins and who loses, and that social workers are expected to work in partnership with parents while simultaneously acting as "witnesses for the prosecution" in court (Dickens 2006, p. 27; Beckett *et al.* 2007, p. 59). Social workers are acutely conscious of the burden resting on their shoulders, characterising this as a feeling of "playing God" or being called upon to make the "judgements of Solomon" (Taylor *et al.* 2008, p. 26). A question arises as to whether social workers' criticisms of the adversarial model need to be set within a wider frame. It is the role of the courts, particularly in Ireland where there is a constitutional imperative to protect the family and a high threshold placed on state intervention, to act as an independent check on the exercise of state power. Social workers are the applicants in child welfare removal cases, and a robust testing by the court of their evidence as applicants is not necessarily a critique of their professionalism. We will present data below on Irish child protection social workers' perspectives on this theme, with a related discussion of implications for their training.

Child care court proceedings in Ireland

The legal framework for District Court child care proceedings in Ireland rests on Article 42A.2.1° of the Constitution of 1937, which obliges the State to 'endeavour to supply the place of the parents" in "exceptional cases, where the parents … fail in their duty towards their children to such extent that the safety or welfare of any of their children is likely to be prejudicially affected'. This constitutional obligation is implemented through the Child Care Act 1991, which places a positive duty on the Child and Family Agency to identify and promote the welfare of children who are not receiving adequate care and protection (s.3(1)). The Child and Family Agency (also known as Tusla) is the national dedicated State agency responsible for family support, school attendance, early intervention and child welfare and protection. It was established in 2014 and assumed functions under the Child Care Act 1991 formerly exercised by health boards and (more recently) the Health Services Executive. Where it appears that a child requires care or protection which s/he is unlikely to receive unless a court makes a care order or a supervision order in respect of him /her, it is the duty of the Agency to make an application for such an order (s.16). Applications are heard in the District Court, which is a court of limited and local jurisdiction dealing with family law, licensing, civil and criminal cases. Except for Dublin (where case volume has resulted in some *de facto* specialisation), proceedings are held in general courts with non-specialist facilities before a single judge who oversees a variety of cases in different areas of law. The Act provides that the

welfare of the child is the first and paramount consideration of the court (s.24), and the Supreme Court has ruled that child care proceedings are in essence an 'inquiry into the welfare of the child',[1] suggesting a non-adversarial approach. The Constitution stipulates a high threshold for state intervention into family life, with a presumption that the child's welfare is best promoted within the family under parental care,[2] and this presumption is reiterated in the Act itself (s.3(2)(c)). While this is the orthodox theory of how the system should work, very little was known until recently about the actual operation of the proceedings due to the restrictive nature of the *in camera* rule.

Findings from our qualitative study and Coulter *et al.*'s reporting project (2015) both suggest that there is no single model of child care proceedings in operation in Ireland, with considerable variations in practices between Districts. For example, in our three county study, the model ranged from being highly adversarial in some Courts, to others where proceedings were of a hybrid nature that was neither inquisitorial nor adversarial, to one judge who was adamant that cases are run along inquisitorial lines and would not permit participants to adopt an adversarial approach (O'Mahony *et al.* 2016b).

The former CEO of the Child and Family Agency was, unprecedentedly, openly critical of the operation of child care proceedings in the District Court, questioning the degree of inconsistency between courts, arguing that the courts had become too adversarial and that social workers were not being treated with sufficient respect (Gartland 2015). Of the cases that make it to the District Court, Coulter *et al.* (2015, p. 15) found that:

> … consent is most likely for an extension of an Interim Care Order, where two-thirds of such applications are agreed to. Almost half of all Supervision Orders are consented to. The initial Interim Care Order is the most likely application to be opposed by the respondent, followed by Care Order applications.

This means, in fact, that quite a large portion of the cases are dealt with on consent and do not involve live evidence by social workers and cross-examination. The specific focus of this paper is to examine what it is like when cases are contested and social workers take the stand.

Methodology

This paper reports the findings of an independent, inter-disciplinary research study examining child care proceedings in the District Court in Ireland. Focus groups and semi-structured interviews were undertaken with 67 professionals, including social workers and managers (n=30) in the Child and Family Agency, guardians *ad litem* (10), solicitors (15), judges (8) and barristers (4), between November 2011 and January 2015 in three counties in Ireland. These counties consisted of a mixture of urban centres and rural areas. Between them, they accounted for approximately 60% of all child care applications in the District Court. This paper focuses predominantly on data from social workers and managers from seven single-profession focus groups, with occasional reference made to data from judges, where relevant. The study received ethical approval from the Social Research Ethics Committee at the researchers' institution. Each participant provided informed consent and permission was also secured in advance from each line manager. Organisational consent was granted by a senior policy officer in the Child and Family Agency. Related permissions were secured from participants and senior decision-makers in the other participating organisations.

Coding of the transcripts was carried out by academics in pairs (one social work and one legal academic) in NVivo 10 using thematic analysis (Braun & Clarke 2006). To avoid bias, participants were asked open questions throughout; transcripts were coded in pairs (with one legal and one social work academic working together, so that both disciplinary perspectives were brought to bear on all data); initial findings were reviewed by study participants; and the analysis has been triangulated against the findings of the Child Care Law Reporting Project (Coulter *et al*. 2015).

While this paper examines social workers' experiences of child care proceedings, we are also mindful of the impact of participating in this model on *the* most important participants: children, young people and their parents. In a future study, we hope to include these views, provided there is a change in the law to allow children, young people and their parents to talk with researchers about their experiences, without contravening the *in camera* rule (see O'Mahony *et al.* 2016a).

Adversarial system

In Irish child care proceedings, the Child and Family Agency is the sole agency empowered by the Child Care Act 1991 to apply for care (emergency, interim and full care orders) and supervision orders. In practice, this occurs by way of social workers instructing the Agency's legal representatives to make an application. In addition to providing a report to the court, social workers regularly take the stand and may be cross-examined on their report by a solicitor, barrister or even a parent. The Swedish and Swiss models, as two contrasting examples, demonstrate how different other child welfare removals decision-making models can be. In Sweden, Social Welfare Boards are comprised of laypersons who make decisions about 'voluntary' removals. The county administrative court, which is the decision-maker in 'coercive' removals, is explicitly based on an inquisitorial model (see Svensson & Höjer 2017). In Switzerland, since 2013, the new Child and Adult Protection Authorities (CAPAs) that make decisions on 'coercive'/contested removals have become multi-professional authorities, whereas formerly they were comprised of lay members. CAPAs are not only decision-making bodies, but also undertake assessments of children's circumstances or instruct others to do so on their behalf. Six cantons have organised their CAPAs as courts, whereas 20 cantons have organised their CAPAs as court-like administrative bodies, whereby the chair may or may not be a legal professional (see Schnurr 2017). The Irish child care model in the District court is much closer to the approach adopted in England and the United States than it is to the above systems (see Burns *et al.* 2017a).

Uniformity of the system

As already noted, there is a lack of uniformity between courts, which means social workers experience the model differently between counties and even *within* counties (O'Mahony *et al.* 2016a, pp. 143-150). As outlined above, while the Irish system is intended to be an inquiry into the child's circumstances, social workers mostly talked about experiencing the system as being highly adversarial in nature:

> It almost feels like you're on trial, that's the experience I've had … you'd have barristers asking you a question and then asking in a different way in the hope that you'll probably trip yourself up. (Social Worker, County 2)

> The system has become more adversarial in terms of certain solicitors questioning the practice of the social worker while giving evidence and it almost becomes almost a trial

> basis: 'Well Ms Whoever, did you do that? And what was the outcome? And did you do that?' And it's more that your work is being checked and I think that, fair enough, it may be a means to an end, but it does take the focus off the central issue – which are [*sic*] the children at the end of the day and their voices and I don't think there's a need; there's probably not a need for that. (Social Worker, County 3)

This experience was not universal; as the following quote illustrates, the judge plays an important role in setting the tone of the inquiry:

> I remember watching a parent's solicitor putting a social worker in the stand and trying to undermine them from the outset in terms of, you know, age, qualification, how long have you worked, what's your experience, and [name of judge] just cut him dead in his tracks and said 'This client is well known to me and that's all you need to know, now get on with your questions' … moments like that are important in terms of validation… (Social Worker, County 1)

The experiences of social workers in another county were somewhat different:

> Like we had Garda inspectors in on a case recently and they were shocked at just the dynamics in court, the way the evidence was tested. They said murder cases would have been done and dusted like within a week or two weeks and ours dragged on and on. (Social Worker, County 2)

High thresholds, a deficit focus and damaging relationships with parents

The data from our study suggests that an adversarial model can leave social workers feeling that they have no choice but to present an overwhelming volume of negative evidence about the parents to meet the high constitutional threshold necessary to secure an order. This culture of "an emphasis on deficits" has been described in other jurisdictions as "destructive" (Beckett *et al.* 2007, p. 59). Echoing findings from the UK (Dickens 2006, p. 27; Beckett *et al.* 2007, p. 59), the participants indicated that this relentless focus on the negative aspects of parenting, with little acknowledgment of any positive aspects, can damage the relationship between the social workers and the parents, making it difficult for them to work together afterwards:

> Once people walk into the court it becomes about who wins and who loses [participants indicate agreement] and I don't know if it's people's preconceptions as to how courts work but one hour in the actual court witness box can undo 12 months of sort of relationship building with the actual family ... you nearly feel that you have to trounce them to convince the court to grant the actual order and you actually feel up there that you're betraying certain things ... (Social Workers, County 1)

> … sometimes social work reports appear to contain every deficit that a parent has made and no reference to the positives that they have made, and that sets the tone for the engagement between the Child and Family Agency and the parents … on the other hand, the CFA may feel if they haven't put everything into their report, the court may not make the order they seek – especially in a neglect case. But, at the same time, you can see that it's totally aggravated the other side … (Judge, County 2)

An additional finding of our study was that, aside from parents feeling under attack by social workers, the relationship between parent and social worker can potentially be further damaged if the parents perceive the credibility of the social workers as having been undermined by cross-examination of their evidence:

> The adversarial system can perhaps I think make that parent more resistant to working with the social care professionals … it must be extremely difficult sometimes for a parent to go outside of the court room, where they have just seen their legal representative spend an hour or two hours or two days chipping and poking holes in the case that the professionals are making, to then go out and be able to recognise that the professional really is telling them what's best for them, their child, their family. There must be a difficulty with that … (Judge, County 2)

Differences between social workers on the merits of the adversarial model

Social workers appeared to have different levels of tolerance of being cross-examined. Even when social workers have a clear understanding of the purpose of an adversarial system, they may still have reservations about how it is implemented:

> I have been cross-examined for nine years in all different courts and I am happy with that; I think it's a really good test of evidence. But it's the underhand nature of the question and the sly comments and the subtleties that the judge picks up on … or makes a social worker nervous in the box and I think that is a problem … (Social Worker, County 3)

> There's one particular solicitor from the Legal Aid Board[3] … she's very, very good at what she does and she's very good at looking at your report, picking out things and twisting them, but the problem comes along then is that the focus is lost ... the child is lost really and the parent is the focus there. But that's her job … (Social Worker, County 3)

> It's very hard when you can't say back to them but 'Excuse me, Sir or Madam, have you been up to this house? Have you seen the cans outside the front door? Have you seen the rooms with barely a quilt cover on it? Have you seen the toilet – the state of the toilet? Have you seen the state of these children's clothes?' And you'd love to say that because, you know, the answer will be 'No, no' and you just go, 'Well, I have'. (Social Worker, County 1)

In the latter quote, one can palpably discern the social worker's frustration with some professionals' perceived distance from the lived reality of children's lives and front-line child protection social work. Robust cross-examination in circumstances where the social worker has a strong view on what is necessary for the protection of a child can take its toll on that social worker's professional confidence. Research in Australia has described "a culture of bullying of child protection workers, by magistrates, legal representatives and clients" (Sheehan & Borowski 2014, p. 105). While our participants did not go quite this far, social workers in County 2, in particular, consistently characterised cross-examination as intimidating:

> They can be quite aggressive at times … It's quite intimidating. (Social Worker, County 2)

> … there was one case in particular and it was done over 3 days … and you're grilled about every little detail and you come off the stand and you're exhausted and, like, just you're made to feel like everything is your fault. As if you were the ones abusing the kids, you know, that's how much it feels like. It's horrible. Like my confidence now is completely gone with giving evidence, I don't like going into court now … (Social Worker, County 2)

> If you know there's a barrister going to cross examine you – I know it's tough enough when you have a solicitor doing it, but psychologically as well it's a bit more intimidating, because you're never going to have the same skills … Before you even go up on the stand, you're going to be intimidated. (Social Workers, County 2)

A core strength of the Irish model is that it places an independent safeguard on the exercise of the State's power. While the adversarial model can be experienced as abrasive by social workers, they occasionally identified positive aspects of that model, as this exchange in a focus group in County 1 illustrates:

> P1: We're constantly complaining about how hard the process is on social workers but it's, kind of, you want it to be that robust, you know, you want it ... because I mean if it was your children you'd want it to be that difficult … I suppose I see that as a strength and I suppose like in particular in the courts that we're in like the District Court that we operate in, we used to operate in, I find the judge very kind.

> P2: … like it's also really important, like, no matter how difficult the process is, I really think it's important for children … to know that the process was robust, you know it's very important for them to know that their parents fought for them and I think that that's worthwhile and I think it says a lot.

> P3: Yeah and the fact that we don't actually make decisions on children in darkened rooms and a nod and wink and that there is an actual process that has to stand up (participants indicate agreement). (Social Workers, County 1)

However, these acknowledgments featured less frequently in our data than the more negative perspectives expressed above, suggesting that social workers' awareness and appreciation of the importance of testing evidence as a check on the exercise of State power is uneven at best.

Child-centeredness of the model

Social workers were, on the whole, pessimistic regarding the ability of a primarily adversarial model to be child-centred:

> I feel the best interests of the children aren't served by the adversarial nature of the courts. For example, I think that so much time can be spent if it's contested and you're being cross-examined focusing on minor details in order to show the health board's [Child and Family Agency's] case to be weak and the parent's case to be strong … the whole issue of the child becomes absent in it. (Social Worker, County 1)

> I think sometimes the child gets lost. In the melee and the circus of what is the legal system, I absolutely believe over the past couple of years that I've been in court that the child is completely forgotten about. It's become this battle between the two sets of solicitors, and, kind of, the child is here, that's the important one. (Social Worker, County 2)

This scepticism towards the capacity of the adversarial process to be child-centred is particularly evident in social workers' views on the appropriateness of direct participation by children in District Court child care proceedings. Our study (see Parkes *et al.* 2015) has shown that while other professionals are critical of the capacity of the District Court to facilitate children's direct participation (through, for example, meeting a judge in chambers or being present in court), social workers in our study were the most vocal profession about seeking to protect children from exposure to the courts:

> I believe no child, if it's not necessary – life and death – has any place being inside in an actual courtroom. (Social Worker, County 1)

> I don't think it's a child-centred thing for them to have to do; kids should be carefree and, you know, not even be aware this court process is going on … (Social Worker, County 2)

> … walking into the court, the whole court system, all the solicitors, they are firefighting, crisis managing, and with the best intentions in the world we deal with very vulnerable young people who would possibly really, really struggle to maintain themselves in such an adversarial system. (Social Worker, County 3)

Aside from the adversarial focus of the system, a separate difficulty identified by social workers was waiting times in court and wasted staff hours waiting for cases to be heard:

> … you could be there at 2.30 until 5.00 or 6.30 and the time we spend preparing for the reports and all that, then at least matters are constantly being adjourned and that, the amount of money that the State ... [is] paying for the fees but it's also paying for our lost time when we could be doing other things and attending to other children that are not being attended to, because the ones that you are always focusing on are the ones that are in court … [it is a] system that is completely archaic and out of date, you know. (Social Worker, County 1)

The most recent Committee on Rights of the Child report on Ireland (2016, p. 9) recommended that 'family law cases involving children … are prioritized in the court system'. The report also recommended additional resources to train judges in family law cases. Our analysis in a previous publication from this study has supported the calls made by others (including the Irish Law Reform Commission, the Law Society of Ireland and the Child Care Law Reporting Project) for the establishment of a specialist family court (O'Mahony *et al.* 2016a).

Respect afforded to social workers

As noted in the literature review above, multiple studies from the UK (McKeigue & Beckett 2010, p. 167; Beckett 2000; Beckett *et al.* 2007, pp. 59-60; Dickens & Masson 2014, p. 356) have highlighted a perception among social workers that less weight is attached to their evidence by judges than to evidence from other expert witnesses. A similar tendency has been noted in Australia

(Sheehan & Borowski 2014, p. 105), and research from the US suggests that it is more common for a social worker's qualifications to be questioned than for those of a psychiatrist or psychologist (Mason 1992). The findings of our research disclose a similar perception among social workers in Ireland:

> We're becoming less and less of the experts in childcare proceedings and it's moving more towards psychologists, attachment specialists, and the actual role of the social worker is around case management and making those applications and not … The weight isn't given to our assessments. (Social Worker, County 2)

Views on guardians ad litem

A particular manifestation of this perception on the part of social workers is the sense that there is more weight attached to the evidence of guardians *ad litem* (GALs) than to that of social workers. This is perhaps more surprising, since GALs invariably come from a social work background and do not hold any professional qualifications that are not also held by social workers. On the one hand, judges emphasised the value of the independent view brought to bear by the GAL, even where it coincides with the evidence of the social worker:

> There's not a deliberate act, but there is a tendency for the CFA to present the CFA case and you know, there are times, it's not appropriate for the judge to advocate on behalf of the child. That's an independent part of the process. And that's what they bring … even if the guardian comes back and says exactly what the CFA were saying in the first place, it's appropriate to have that on behalf of the child to have that check in there. (Judge, County 2)

> I think a social worker has many different roles to fulfil, and sometimes social workers consider themselves to be social workers for the family, sometimes social workers consider themselves to be social workers for the child, sometimes social workers might consider themselves to be social workers for the parents ... and in the majority of cases what the social worker is saying … coincides with what the guardian is saying is the wishes of the child … (Judge, County 2)

On the other hand, some social workers expressed the view that the GAL can be an unnecessary duplication of effort or can even serve to undermine the social worker in the eyes of the parent, by giving the impression that the judge does not trust the social worker's assessment of what is in the child's best interests:

> …we have a high level of guardian *ad litem* associated with cases, which speaks volumes to me: we have no credibility when we go to court. Why do you need a GAL for such cases, sometimes, do you know what I mean? Because our job is to gain the wishes of the child and the voice of a child anyway. (Social Worker, County 2)

> I think my report would always include the views of the child, the views of the parent; they may or may not agree, our recommendations may be completely different, but I do feel we have a role in including them and I think we discount that – or the courts nearly discount that – too quickly in saying, 'Oh my gosh, there's no one here for the child, therefore we will appoint a guardian *ad litem*', even when our views are very clearly stated in the court

report. (Social Worker, County 1)

> .. part of our role is very clearly to advocate for children's needs but also put their views across and to, and families can at times be sceptical of that and the idea of then appointing someone else, the court has to appoint someone else reinforces, it can reinforce that belief that actually the social worker is just the face of a bureaucratic sort of system, not out there to advocate for the best needs of their children, and the social worker has to be kept in check or checked upon by someone else, i.e. a guardian *ad litem* … it's undermining to the social worker … (Social Worker, County 3)

The contrast between the perspectives of judges and social workers in our study on this point seems to display a difference of attitude that may be partly or largely attributable to differences in training and professional values. In the passages quoted above, social workers emphasise their own role as a protector of and advocate for the child, and – perhaps conscious of the limited resources available in the current fiscal climate to work with families in crisis – do not always appreciate the value of spending precious resources on a GAL who might do little more than confirm what the social worker has already said. Judges, on the other hand, are more conscious of the adversarial framework, the ultimate aim of which is to establish the objective truth by interrogating the evidence. In this regard, they view the social workers as partisan participants with an interest in the outcome, rather than as independent advocates for the best interests of the child. As against this, the GAL is not a party to the proceedings, and operates in an independent role that may lead to less scepticism towards his/her evidence. We hope to develop this analysis in more detail in a future paper.

Public accountability and responsibility for children at risk

Finally, social workers were frequently animated in the focus groups concerning the pressure and strain of being the professional most responsible for the safety of children at risk. Literature from the US and UK has documented the traumatic impact on social workers of being exposed to risks to their personal safety and to public blame where things go wrong (Horwitz 1998, pp. 364-366; Schraer 2014). Social workers in our study expressed similar concerns, and complained of an apparent lack of understanding on behalf of the legal professionals regarding the risk to which certain directions or decisions might expose either the children or the social workers themselves:

> Solicitors believing that they're actually helping their client by going for the fight, the adversarial thing, that they're in some way helping the client. The child on their side is totally forgotten about … They don't know anything about how the child is but yet they should give me the respect that I do, that I have been in there and I think the weight of our professionalism, our reports, is so outweighed by the legalistic side … [they] might be making me send home a child that I know ... I'm going to be worrying about during the night because I know his life is going to be in some way neglected, abused between now and the next court date. It's that dangerous, you know, and that's the fear every social worker has. (Social Worker, County 1)

> I had a case there about a year or two ago where mum would have had a mental health issue … she would have made threats to take my life and harm me like … I had to be escorted for a period of time but that judge in the court was still directing – because we hadn't had

> contact with the mum, we couldn't find her, she wasn't coming to court – and the judge was like, 'You have to find that mum, you have to go out to her house'. And I'm getting death threats and there are two Gardaí [Garda Síochána – Irish Police] in court … And she's going for me in court and, like, the judge sees all this and yet, you know, it's still the social worker's responsibility or the team leader or both to go out to the house or to go out wherever and put themselves at risk ... (Social Worker, County 1)

Our previous work (O'Mahony *et al.* 2016a) and the Child Care Law Reporting Project (Coulter *et al.* 2015) have highlighted the variation between courts in the threshold that is applied to care order applications. Where a high threshold is applied, social workers feel that they are left carrying additional risk, resulting in worry and responsibility which they perceive is not equally shared with other professionals and services:

> I had one there three months ago and our application for an ICO [Interim Care Order] was refused and it was detrimental to the kids, and our whole team, the whole Child and Family Agency, were so worried about these kids as well, do you know what I mean, where we had to employ a service to go in seven days a week just to ensure those kids were fed and being looked after. It was horrendous, the decision. (Social Worker, County 2)

> I think it's almost impossible at times and when something goes wrong – because you never hear about the good things that we do, ever – it's when something goes wrong it's never the judge refused to make the ICO or it's never the guards [Garda Síochána – Irish Police] didn't follow through on something, it's always the social work department messed up. (Social Worker, County 2)

This feeling of being left to 'carry the can' for decisions made by courts, and to take the ultimate public blame when the system fails to protect children, compounds the perception among social workers that their evidence is afforded the least weight in court. The result is that social workers perceive themselves as not receiving the respect that they are due in child care proceedings.

Discussion

The courtroom is not a natural habitat for social workers, but it is clear that in Ireland and elsewhere, it is an environment in which they spend a significant and increasing proportion of their time. The literature to date makes it reasonably clear that some social workers are less than comfortable in the court environment and with the model as it is currently constituted. This paper sought to add to our understanding of why this is the case, and moves the discussion forward by exploring what can be done to help social workers acclimatise, to make the environment less challenging for them and to improve the model for all parties. Social workers' recommendations for reforms were mostly external to the profession – changes to courts, specialist judges, training for legal professionals, and appropriate facilities to enable greater participation of children, etc. – rather than reflecting on how changes in *their* practice could improve the system. Further space for dialogue within the profession is required to take stock and reflect upon the findings of this study and to build continuous professional development and reflective opportunities to seek to improve practice. That being said, social workers' recommendations were often mirrored by recommendations made by professionals from other disciplines in the study.

Adversarial model

Social workers who participated in our study expressed significant reservations about two main issues: the predominantly adversarial model that currently operates in Irish child care proceedings, and the level of respect that social workers are afforded within the operation of the system. On the former point, these concerns have some merit. In previous publications (O'Mahony *et al.* 2016a; Parkes *et al.* 2015), we have questioned whether the Irish approach is the best model to protect the rights and promote the participation of children and their parents, and called for the establishment of a specialist family court. A similar position has been taken by the Child Care Law Reporting Project (Coulter *et al.* 2015). A less adversarial approach could help to mitigate some issues faced by social workers (and parents and children), such as excessive or intimidating cross-examination resulting in damage to their confidence or to their relationship with the parents involved in the case. Adequately resourced specialist family courts are certainly not a panacea, but our analysis elsewhere shows that it could be an important step contributing to the creation of a better working environment and the reduction of time lost waiting for cases to be called.

Respect afforded to social workers in court

As regards the respect afforded to social workers, it is clear that social workers perceive that they have a low status in the courts compared to other professionals; what is less clear is the extent to which this perception is reflected in reality. Unlike, for example, in Australia (Sheehan & Borowski 2014, p. 105), other professionals who participated in our study (solicitors, barristers, judges, guardians *ad litem*) were not overly critical of social workers' professionalism and contributions, and judges were often mindful of (and commented upon) how hard it must be at the 'coalface' of child protection and welfare social work. If a genuine lack of respect is present, it is at an unarticulated or perhaps even unconscious level. Indeed, it may be the case that more could be done to aid legal professionals in understanding the nature of child protection social work and the dilemmas faced by social workers in their daily practice. Furthermore, additional work could be done to help build social workers' professional resilience to cope better with cross-examination and the Child and Family Agency needs to do more to avoid exposing novice and newly-qualified workers to court work too early in their careers.

Recommendations

While the establishment of specialist family or children's courts may mitigate some of the more negative features of the adversarial model, the experience of England & Wales demonstrates that the issues outlined in this article still persist in specialist courts (see, for example, Dickens 2006; Beckett *et al.* 2007; McKeigue & Beckett 2010). Some form of national consultative forum involving all relevant parties and citizens to discuss the future direction of this area of practice might shed some light on what type of system is desired or possible. The proposed review of the Child Care Act 1991 is a promising opportunity to provide a clear vision of the type of decision-making body and model that could address persistent short-comings of the existing model identified by participants in this study and in the Child Care Law Reporting Project. There are some major hurdles to overcome—for example, finding a way to include the voices of children which have yet to be effectively heard on a consistent and systematic basis. Yet, from this study and the Child Care Law Reporting Project, there is a degree of clarity on what needs to be changed. It seems unlikely, however, that the adversarial the model will be entirely abandoned in the Irish system; the right to test evidence and confront witnesses is a well-established feature of the constitutional protection provided for in principles of due process and natural justice, and this serves as an obstacle to any

attempt to adopt a purely inquisitorial approach to proceedings where constitutional and statutory rights are at stake.

The data suggests that social work educators and employers need to provide improved training and ongoing continuing professional development to help students and social workers further develop their understanding of the purpose and practical operation of adversarial legal systems; avoid personalising the critique inherent in cross-examination; further develop skills in presenting evidence, and support workers to debrief from contentious and adversarial cross-examinations. In particular, work needs to be facilitated with social workers to explore the implications of their position as *applicants* in child care proceedings, particularly as representatives of the state seeking to interfere in the constitutionally protected private domain of the family. In an adversarial or quasi-adversarial model, when a court seeks an independent opinion from a guardian *ad litem* or an expert witness, it is not intended to undermine social workers or to indicate that they are not trusted; it simply reflects the fact that there is disagreement between two parties in an adversarial proceeding, and the social workers act on behalf of one of those parties. In addition to social workers' facilitation of the voice of the child in their reports, the appointment of a GAL also strengthens the voice of the child in child care proceedings. When the independent opinion confirms a social worker's assessment, it may appear from a social worker's standpoint to be a waste of resources, but it can confirm good practice and make a court's decision more robust.

Child protection systems that rely on court proceedings to resolve contested child protection interventions will always necessitate a high level of interaction between social workers, judges and lawyers. Child protection social workers do not enter the profession in the hope of spending significant periods of time in court; but they cannot avoid doing so, and indeed they have an established and essential role to play in child care proceedings. With that in mind, adjustments are needed on both sides. Social workers need to be supported through training and education, and prepared to better cope with the practical operation of an adversarial system; and the system itself needs to look at ways in which social workers can better facilitated in performing their essential role. Combining these approaches will benefit social workers, and in the process, will ultimately benefit the children they are seeking to protect.

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[1] O'Flaherty J, *Southern Health Board* v. *CH* [1996] 1 IR 219, at 237: child care proceedings are 'in essence an *inquiry* as to what is best to be done for the child in the particular circumstances pertaining [emphasis in original].'

[2] See, e.g., *Re JH (an infant)* [1985] IR 375; *North Western Health Board* v. *HW* [2001] 3 IR 622; and *N* v. *Health Services Executive* [2006] 4 IR 374, as discussed in Kilkelly and O'Mahony (2007).

[3] The Legal Aid Board is statutory body providing legal aid in civil law matters to people who meet certain eligibility criteria.