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**Title**

The Formalized Framework for decision-making in child protection care orders: A cross-country analysis

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**Abstract**

Care orders within the child protection system are some of the most invasive interventions a state can make. This paper examines the discretionary space governments set out for child protection workers when they prepare care orders. We analyse the formalized framework for these decisions in England, Finland, Norway and the USA. We focus on knowledge, timelines, how children and parents are involved and accountability. We find that Norway and Finland have highly de-regulated systems with wide discretionary space, whereas England and the US are highly regulated systems with narrow discretionary space. The US differentiates itself with relatively little parent and/or child involvement in decision-making. England and Finland do not have defined deadlines for terminating the process, and Norway has few directives on what information to collect. Such differences will influence the quality of decisions as well as the principles of the rule of law.

Keywords: comparative country analysis, child protection, decision-making, discretion, involuntary care orders

## Introduction

One of the most invasive and consequential decisions a state can make is to involuntarily remove a child from his or her parents' care. As such, these decisions must be of the highest quality possible. In spite of the gravity of these determinations, there are notable differences across child protection systems, within and between actors in the system, allowing for considerable discretion and thus the potential for inequities for children, parents and families. Discretion in state interventions raises questions about the principles of the rule of law, democratic control and legitimacy (Molander et al., 2012; Elster, 1989; Piper, 2000; Dunn et al., 2007). In modern democratic states, it is usually the court that makes decisions about care orders, but it is the child protection system<sup>1</sup> and front line child protection workers that have responsibility for the day-to-day interactions with children and families – and to suggest and carry through preparations for a care order. The aim of this paper is to examine the discretionary space (compare Molander et al., 2012) governments give their frontline child protection workers to conduct care order proceedings.

Within the child protection system we focus on the agency level and the decisions where the State assumes parental responsibility when parents are unable or unwilling to perform their parental obligations. By *care order*, we refer to the processes and activities associated with recommendations to the court to pursue an involuntary removal. Discretion in care order decisions is necessary as there are individual and situational factors that inevitably must be considered in each case in order to make a sound decision. However, discretion can also be misused (Brodkin, 2012; Maynard-Moody and Musheno, 2012). The research literature tells us little about the quality of decision-making in child protection systems, but some have raised questions about decision makers' comprehensive review of evidence and arguments, and the potential for biased information gathering (for example, Munro, 1999; 2008). Other signals from the field suggest system challenges such as qualified staff and turnover, which may leave decision makers excessively dependent upon alternative sources of information and insufficiently prepared to engage in sound decision-making (O'Sullivan, 2011).

There are many factors and elements that influence and can distort a decision-making process; our focus in this paper is to examine the formal framework for involuntary care order decisions in four child protection systems – England, Finland, Norway and the US. A formal framework is here understood as the formalized rules and procedures that govern and inform organizational activities (Hatch, 2013; Weber, 2004). This formalization can consist of the written documents, legislation, instructions, guidelines and procedures that are made by legislators and administrative managers to organize, streamline, and make uniform an approach to a social problem or issue. How strongly do governments steer and inform workers? What aspects in a decision-making process are deemed important and less important? Do these frameworks lay the groundwork for high quality and sound care order decisions? In this paper we use four dimensions as quality standards of a decision process: evidence and information; involvement of child and parents; time; and accountability. We elaborate on this below. Finally, we ask if and how the formal frameworks relate to types of child protection systems and welfare state models.

The paper is organized in four parts, including an outline of in- and cross-country research on the formalized framework for care order decision-making, followed by a theoretical presentation of the decision-making dimensions that we highlight here. Thereafter we present the formal framework for care order decisions based on four decision-making dimensions, followed by a discussion of possible strengths and weaknesses of the four decision-making systems.

### **Decision-making in child protection**

Decision-making in the child welfare system is complex and made with a high degree of uncertainty (compare Munro, 1999; 2008; O'Sullivan, 2011). In child protection practice, decisions involve – at a minimum – multifaceted normative issues, many types of research knowledge, conflicting legal rights, the unique needs and interests of involved children and their carers, and prioritization of scarce resources, typically weighted against each other, reasoned and finalized. Further, the context and setting for decision-making, such as the institutional, organizational and legal framework, matter. The decision-making model and political and practice level cultures and normative platforms are all important as well. For example, these four countries draw the border between private and public responsibility for children at risk differently (Gilbert et al., 2011), and governments have unique approaches to delegation of power and authority (Connolly, 2007). In short, there are any number of factors that influence when and how decisions are made in child protection services, and authorized professional discretion is included (Brodkin, 2012). There are few studies on how the formalized framework sets the arena for decision-making on care orders. Cross-country studies on decision-making in child protection in general and on care orders in particular are scarce. Research on decision-making in child protection shows that there are issues in the quality of decision-making in England, Finland, Norway, and the US, and there appear to be variations in how similar cases are handled even within the same agency. Bolton and Lennings (2010), based on their review of existing research, state: 'research consistently indicates that professional decision-making in child protection is subject to bias...and varies significantly even between expert clinicians' (p. 1300).

One part of the problem for the State in regulating decision-making concerns the distinction between discretionary space and discretionary reasoning (Molander et al., 2012). Discretionary space is about the types of issues professionals are given to handle and make decisions about a case, and discretionary reasoning is about the justification of decisions. In his reflections on the challenges of handling normative issues such as the 'best interests' principle, as a standard for decision-making, Freeman points out that 'conclusions should be supported by reasoned argument and that bias or worse prejudice should be eliminated' (2007, p. 28; compare also Dunn et al., 2007). Following this line of thought as an expression of discretionary reasoning, we refer to a regulative idea that decision-making should be a process of deliberation that rests on good information regarding the contents of the case and the parties' situations, that possible choices of action and their consequences must be explored, and that possible results should be ranked in relation to overall goals (O'Sullivan, 2011; Munro, 2008). An important consideration in theories of argumentation, as understood by Alexy (1989) and Habermas (1996) is that legitimate discretionary reasoning comes through rational discourse in which all parties involved participate and all relevant arguments are presented for open and free discussion. Such a rational discourse builds on the premise that all persons

concerned can participate, that they can freely put forward their viewpoints and arguments, that all relevant information is included, and that there is a review of the process.

Thus, when we examine the discretionary space for front line workers, we focus on the following four dimensions (compare Eriksen and Weigård, 2004; Eriksen and Skivenes, 1999). First, that all relevant information, evidence and expert knowledge is included in the process. Second, that there is time to process the information that is brought forward from all parties and sources, and that the time line allows for considered deliberation; at the same time that it is sensitive to the developmental needs of children. Third, that children and parents are involved in the process to the extent that they are heard, that their perspectives and interests are included and considered, and that they are given adequate information so that they can make informed choices about their circumstances and options. Fourth, that there are accountability mechanisms in place to improve and monitor decision-making processes and outcomes.

The data material for this analysis includes the written documents, legislation, instructions, guidelines and procedures that are made by governments (that is, legislators and administrative managers) to organize, streamline, inform and make uniform care order proceedings at the agency level. The data are different in each country as the State instructs the child protection agencies in different ways. We pay attention especially to national legislation and national guidelines, and since the US child welfare system is not a single system but a collection of 50 state-systems with significant variability both across and within states, information from two local jurisdictions within the state of California is included here.

### **Care order decisions in different child protection systems**

A general overview of the four countries' child protection systems, their principles and orientations regarding protection of children at risk of harm or abuse or at risk of harming themselves or others, are found in Gilbert et al. (2011). The four selected countries represent distinctive welfare state models and child protection systems. Simplified, we will categorize Norway and Finland as representing one end of the Esping-Andersen typology (1990), and England and the US as another, with the former as two social democratic welfare states and the latter as two liberal welfare states. The Norwegian and the Finnish child protection systems are categorized as 'family service systems,' with a relatively low threshold for providing a large range of family services, and, in general, characterized as having a greater orientation to the child and the child's perspective (Pösö, 2011; Skivenes, 2011). In contrast, the US and the English could be categorized as 'child protection systems', with a relatively high threshold for intervention in the family and a more limited mix of services offered to the family (Berrick, 2011; Parton and Berridge, 2011). All four countries set norms for designated individuals to report when there is reason to believe a child is at risk of harm or neglect. The overarching principles for the child protection systems in these four countries differ slightly. Even though they are all established to protect the child's interest, Norway, Finland and England subscribe to the 'child's best interest' principle, although England has chosen a slightly different formulation, stating that the 'child's welfare is paramount'. The US distinguishes itself with an overarching principle focused on the child's 'safety and risk of harm'. The interaction between the child

protection agency and the courts varies in care order cases. In the two risk oriented systems, England and the US, the court makes several decisions in care order proceedings, and as such there is a regular interaction between the court and the child welfare agency. In the family service oriented systems, Norway and Finland, there is no interaction between court and the agency before the one decision-making point that occurs when the agency sends a care order application to court. In this regard, the court makes a decision, and then it is implemented by the agency. Thus, the preparatory work by the agencies in care order cases differs in these countries. Following each country's child protection system orientation, Norway and Finland, as family service systems, have approaches where in-home services dominate. About 69 percent of the children in the child protection system in Norway live with their biological parents and receive in-home services, and a total of 83 percent of all services provided are with parental consent (NNS, 2011). The emphasis on in-home services is also evident in Finland where about 7 percent of all children between the ages of 0–17 receive in-home services and about 1 percent of children were in care in 2011 (*Lastensuojelu 2011*). In the US, federal estimates suggest that each year, about two-thirds of child maltreatment victims may receive in-home services compared to about one-third of children removed to foster care (US DHHS, 2012), however the intensity and duration of services is substantially less than what might be encountered in a Nordic context. The picture in England is similar to the US although direct parallels are difficult to describe precisely using data. Children with Child Protection Plans usually live at home while assessment and planning work is taking place; this will involve a time-limited multi-agency plan, the outcome of which will depend upon the individual case.

The position of involuntary care orders in these four systems varies considerably. Norway and England have around 70–75 percent of out-of-home placements defined as involuntary care orders, whereas in Finland 21–25 percent of the care orders are involuntary. Estimates in the US are hard to come by. Data from one large state, however, indicates that approximately 89 percent of out-of-home placements are involuntary (Needell et al., 2013). The term 'involuntary' care order is not shared by all the countries, and there are variations in which types of out-of-home placements are defined as care orders. For example, emergency placements are not treated as care orders due to their temporary nature in Finland, but are so in the US. These differences in the degree to which one country relies on involuntary care vs. another's reliance on voluntary care speaks to fundamental differences in the role of the family vis-à-vis the State and the different child protection system orientations. These differences also point to the underlying frameworks for decision-making including one state's reliance on a litigious system based upon findings of fact and verification of legal allegations compared to other states' orientation towards a best interest consideration and a search for supportive services. Similar among these four countries is the role of the court in authorizing involuntary care orders, and the child protection agency's role in recommending and carrying through the care order proceedings. At the agency level in Norway, agency managers have the formal authority to initiate a care order proceeding. In Finland, the decision to propose a care order to the administrative court is made by two child protection workers and their team manager. In England these recommendations are made and approved by agency managers, in conjunction with the local authority legal department. In the US (California), child protection workers make recommendations approved by their supervisor.

With this short and necessarily limited backdrop of the child protection systems, the following sub-sections outline four dimensions of the broad formalized framework for decision-making regarding care orders and point out areas of similarity and difference between countries.

*Inclusion of information, evidence, and expert knowledge*

In all four countries, evidence must be brought to bear to show that children's circumstances qualify for a care order. Courts are involved to ensure that appropriate procedures have been followed, parents and children have experienced due process, and eligibility for care has been met. Each of the four countries meets these standards differently, each relying on unique aspects of evidence and justification. The Norwegian Child Welfare Act (CWA Article 4-12) sets three criteria for a care order: first, that there is serious neglect or harm or failure to provide for the child. Second, that in-home services cannot, or will not, help; and third, that a care order is in the best interest of the child. Thus, legal expertise is required. Information gathering is closely connected with the persons and agencies that are involved in case proceedings. Parents and the child are important providers of information, as are other professionals that have been or are in contact with the child and the family. The CWA specifies that all information should, if possible, be collected in collaboration with parents and that parents know what information is collected. The agency has a right to investigate, to visit the family's home, and to bring the child to an examination if necessary (for example, at a hospital). The agency may also order an external expert report or assessment (Child Welfare Act of 1992, Norway, article 4-3).

In Finland, when care order decisions are prepared, the focus is on demonstrating that the three criteria for the care order are met: first, the child's health or development is seriously endangered by lack of care or other circumstances in which they are being brought up, or the child seriously endangers his/her health and development by abuse of intoxicants, by committing an illegal act other than a minor offence, or by any other comparable behaviour. Second, in-home services have been determined insufficient or irrelevant. Third, the care order and related substitute care serves the principle of the child's best interest. All three criteria play an important part and therefore, as in Norway, evidence should be brought to bear on all three (Child Welfare Act, 417/2007; Lastensuojelun käsikirja, 2013). In order to demonstrate the level of endangerment to the child's health and development, social workers collect information made available throughout the child welfare process. The opinions of the child and the parents as well as the opinion of the people who are close to the child should be considered as forms of evidence. The social workers also assess the outcome of each in-home service provided and whether other helpful in-home services could still be available. They are obliged by the Finnish Child Welfare Act to ask for *expert opinions* of those professionals who are involved in the child's or parents' lives. This can mean, for instance, teachers, kindergarten teachers, doctors who know the child, or people who have worked with the parents in substance abuse treatment or mental health. In addition, each care order has to be evaluated by a multi-professional team; experts in the issues of children's health and welfare. Every social welfare agency is obliged to provide legal expertise to support social workers in care order decision-making.

In California, care orders may commence if any of several highly detailed conditions are met. These conditions, codified in law under Welfare and Institutions Code 300, include harm or substantial risk of harm relating to physical abuse, sexual abuse, neglect, etc. (all defined with high specificity in the law). Evidence-based tools are used extensively in combination with practice wisdom to determine children's risk and safety. Most counties use Structured Decision-making (SDM) tools to help guide and then check practice decisions (see [www.nccdglobal.org](http://www.nccdglobal.org)). Two tools in particular – the Safety Assessment Tool and the Risk Assessment Tool, must be completed as a case moves through the system. Each tool includes a list of items that have been empirically tested to assess their relationship to safety and/or future maltreatment. Each item has an associated glossary that details the exact parameters of the item in order to reduce ambiguity of meaning and inequitable decision-making between social workers. Child protection workers are required to file with the court a detailed report to justify an involuntary care order. Among the several issues included in the report is a federal requirement to indicate that reasonable efforts were made to avoid an out-of-home placement (AACWA 1980)

Like the US, an English care order must demonstrate that the child or young person is suffering significant harm or is likely to suffer significant harm. Harm is defined as ill-treatment (including sexual abuse and non-physical forms of ill-treatment) or the impairment of health (physical or mental) or development (physical, intellectual, emotional, social or behavioral), including impairment suffered from seeing or hearing the ill-treatment of another (Children Act 1989, pp. 31–9, expanded by the Adoption and Children Act, 2002). 'Significant' is not defined in the 1989 Children Act, although the court is advised to compare the health and development of the child 'with that which could be reasonably expected of a similar child.' The guiding principles of the 1989 Children Act (p. 1) state both that 'the child's welfare is paramount when making any decisions about a child's upbringing' and that 'the court shall not make an order unless it considers that doing so would be better for the child than making no order at all'. While the above outlines the threshold criteria for seeking a care order, the 1989 Children Act and statutory guidance (HM Government, 2013) provide the framework for inquiries, assessments and decision-making in all cases where there are child protection concerns. Much of this involves multi-disciplinary involvement, particularly in decision-making forums such as case conferences. The local authority will only be able to seek a care order when child protection workers are able to demonstrate that the above threshold criteria are met.

#### *Timelines for decision-making*

Child protection workers are key decision makers in each of the four countries, but the time available for critical decision-making is starkly different. The variability relates to the period of time available to assess the family's circumstances, and the timeliness for court review.

Norwegian legislation suggests that an investigation should begin as soon as the situation requires, according to the law, and the agency has three months (six months under special conditions) to conduct the investigation. In contrast, Finland does not impose time restrictions for care orders but it does for emergency placements. There is no point in a linear process where a care order preparation might 'begin'. Instead, the process is designed to serve the best interest of the child and the timing of the process should acknowledge the child's interests. England also

does not set a deadline to finalize the preparations for a care order. In California, the timing for decision-making is determined by law. The child welfare system response is triggered by a child maltreatment referral. The referral is immediately assessed by a child protection worker at the 'hotline' and an initial determination is made relating to the possibility of imminent danger. In cases of extreme concern (that is, 'imminent danger'), a child protection worker must investigate the case within two hours. In less severe cases, workers have up to ten calendar days to investigate the circumstances of the referral. The investigation / assessment process can take up to 30 days. Once a decision is made to take temporary custody of a child, the child is removed by the child protection worker (sometimes in collaboration with the police), followed by a presentation of evidence to court within 48 hours in order to sustain custody, and further evidence must be presented to court within 30 days to detain a child longer and/or to impose a case plan for services. These strict timelines were developed, in part, to convey to all actors in the system a sense of urgency, given the serious nature of the proceedings, and to ensure that children and their families are not lost to a slow-moving bureaucracy. Time frames utilized in court offer parents clear guidelines to allow them to contest decisions if they believe children have been removed inappropriately.

#### *Involvement of children and parents*

We focus in this paper on care order decisions that are imposed on families and are, as such, involuntary even though parents and children may sometimes agree with the decisions made about their fate. Even in circumstances where families object to the actions of the state, parents and their children can have a voice in selecting an appropriate course of state intervention. Yet we see across the four countries studied that each country's formalized structure accounts for child and parent 'voice' quite differently.

The formalized framework for the Norwegian child welfare system prescribes that both parents and children should be included in decisions about care orders. The legislation governing the system requires that parents are informed, heard, have a lawyer or support person, and are given the opportunity to comment on information and assessments presented. In particular, parents are allowed to present their views on the case and related circumstances, and they are provided free legal aid to assist them in their interactions with the child protection agency. The legislative framework gives children strong standing, not only in care order cases but in all interactions with the child welfare system:

*A child who has reached the age of 7, and younger children who are capable of forming their own opinions, shall receive information and be given an opportunity to state his or her opinion before a decision is made in a case affecting him or her. Importance shall be attached to the opinion of the child in accordance with his or her age and maturity. (CWA article 6-3, first section)*

Older children, that is, children that are 15 years or older, are considered a party in the case (similar to parents), and younger children are invited to participate in their own care planning. It follows from the legislation that the impact and degree of

inclusion of children are related to considerations of their age, ability to form an opinion, maturity and understanding.

The Finnish Child Welfare Act (417/2007), implemented in 2008, goes even further: Every child entering the child welfare system – regardless of age – is entitled to participate: the children’s right to obtain information in a child welfare case affecting them, and the opportunity for them to present a view on the case, must be safeguarded for the child in a manner in keeping with their age and level of development. When assessing that of the need for child welfare, a decision concerning a child or young person or the provision of child welfare must pay special attention to the views and wishes of the child or young person (Child Welfare Act 417/2007). Ascertaining the child’s view might sometimes endanger the child’s health or development or it may be manifestly unnecessary, in which case the law allows the principle to be disregarded. A child who is 12 years of age or older is included in the formal administrative process (‘hearing’) at the agency and his/her opinion is given the same weight as his/her custodians. If a child disagrees with the proposal for a care order, the care order will be treated as involuntary. Parents and other custodians are also involved in the Finnish decision-making process. The social work led process involves all the adults who are close to the child and who provide for the child’s care and upbringing and their views and opinions are heard. This can mean biological parents and stepparents, biological grandparents and relatives as well as the relatives of the stepparent. Yet, when it is time to carry out the formal hearing for the care order decision, only the opinion of the legal custodian has legal status. The child is entitled to have a ‘guardian ad litem’ if there is concern that his/her opinion would not otherwise be well presented. The parents and the child are both entitled to have legal aid, which is free of charge for those with financial need.

In the US (California), child welfare practice is guided by a series of government manuals (California Department of Social Services 2012). Within these policies, local jurisdictions have latitude to fashion their practice to meet regional needs. With regard to the inclusion of family, written parental consent must be obtained prior to a *voluntary* care order, however when an *involuntary* care order is required parents need not necessarily be included directly in decision-making. Instead, parents must be provided written notice of their right to apply for judicial review within 24 hours of their child’s placement. Parents and children are each provided with legal representation in court. Children’s right to be heard in agency decision-making is not noted in the formal policies and procedures manuals. In practice, we see wide variation in the inclusion of parents and children in decision-making, usually through team decision-making (TDM) meetings, though these are not always offered, nor are they uniformly organized.

In England, the principle of working in partnership with parents is central to the Children Act 1989 and subsequent guidance; thus parents are involved in child protection processes, meetings, assessments, and, in some jurisdictions, Family Group Conferencing, prior to a formal decision to seek a care order. At this point the local authority is required to hold a legal planning meeting and formally inform parents about this intention. Referred to as the ‘Letter before Proceedings’ this provides parents with access to legal support and triggers a formal meeting (Ministry of Justice, 2008). While partnership with children and young people is a core principle of the legal framework, this has been strengthened in recent guidance. A

key principle underpinning effective safeguarding arrangements in every local area is 'a child-centred approach: for services to be effective they should be based on a clear understanding of the needs and views of children' (HM Government, 2013, para.8). It later states, 'Social workers, their managers and other professionals should always consider the plan from the child's perspective. A desire to think the best of adults and to hope they can overcome their difficulties should not trump the need to rescue children from chaotic, neglectful and abusive homes.' (HM Government, 2013, p. 22).

### *Securing accountability*

In each of the four countries there are layers upon layers of accountability mechanisms that are institutionalized in the child protection system to guard against capricious decision-making by child protection workers or judges. We narrow our focus here to accountability mechanisms that seek to give input to or review/control over care order proceedings at the agency level.

The care order proceedings in Norway have built in several discussion points that provide an opportunity for examining and interpreting information. Child protection workers and team leaders work together. Thereafter, a management group including team managers and agency managers reviews the case. The written material is available for parents and their lawyer. If external experts are used, the Expert Commission on Children reviews the report. There are several inspectorate or overview organizations that are in place to control and check on child welfare agencies. Some of these can receive complaints from service users and others about the child welfare system. The National Audit Office is authorized to investigate many areas of the public sector and has done so in the area of the child welfare system several times over the last 10–15 years. Finally, care order proceedings enjoy multiple layers of oversight as municipality lawyers and the courts regularly review procedural compliance.

The Finnish Child Welfare Act emphasizes the importance of thorough documentation and therefore *documentation* may be seen as a key measure of accountability. Child protection workers are required to prepare written documents for the care order decision. These documents make the care order application, which is sent to the administrative court. All documents are provided to the clients as well. When preparing the care order application, the relevance of the care order is tested and evaluated. The Act requires two social workers (child protection workers) to be involved in care order preparation; the agency-based application is then approved by the child welfare manager. Parents and children of a certain age are entitled to appeal the decisions made by the social welfare agency. Appeals and complaints are commonly addressed first to the person in charge of child welfare services. They may also contact the local social ombudsman for advice. The municipalities in Finland are obliged to keep a child welfare register of all their child welfare clients and provide statistical information based on these to the National Institute of Health and Welfare which provides a national annual report on child welfare. The National Supervisory Authority for Welfare and Health and Regional State Administrative Agencies monitor child welfare in general but they do not have special oversight responsibilities relating to care order proceedings.

The federal government and California have adopted a detailed scheme to account for the outcomes of the child welfare system through a layered data collection

strategy. All states are required to make annual reports to the federal government on several outcome measures including the number of children who are re-reported to the system for further maltreatment following case closure, the number of children entering care, the number of placements children experience while in care, etc. In California, these data requirements are supplemented with additional data demands and each county must report their data regularly and devise 'System Improvement Plans' (SIPs) to address system weaknesses that may be revealed. Data for every county are displayed publicly on an ongoing basis so that public officials, the press, and citizens in the community can review system performance over time, in comparison to other counties, or in comparison to the state as a whole (see [http://cssr.berkeley.edu/ucb\\_childwelfare/](http://cssr.berkeley.edu/ucb_childwelfare/)).

At the individual level, lawyers for all parties to the case provide another layer of accountability and allow for parents to contest judicial decisions. Of course, judges serve a final function in accounting for child protection worker practice, though court proceedings are not typically open to the public for observation.

Within local authorities in England, managerial oversight of cases will be evident. This will involve social work decisions being overseen by managers within the organization; the local authority legal department also plays an important role. At a local strategic level the Local Safeguarding Children Board is responsible for ensuring safeguarding arrangements, and also undertakes Serious Case Reviews (SCRs) following a child death or very serious incident. SCRs are a particular feature of the English child protection system and these reports are now publicly available and often subject to considerable political and media scrutiny. Some of the most serious high profile cases have led to government inquiries and have informed national and local policy reforms. There are also a number of mechanisms which scrutinize the performance of local authorities and other agencies concerned with child protection, most notably inspection regimes, which, despite claims to reduce bureaucracy continue robustly under the current government. Such inspections are regular, can be unannounced and can have consequences for the local authority and organizations involved; for example, job losses, managerial changes, or public opprobrium.

## **Discussion**

A crude summary of the four countries' care order proceedings suggests that these governments have quite different approaches regarding child protection workers' use of professional discretion. Finland is on one end of the spectrum, with a highly *de-regulated* system in which legislation is general and national guidelines are few, and by and large the proceedings and decisions are made by child protection workers in collaboration with the child and the family. The Norwegian system is quite similar to the Finnish, but less de-regulated as it has strict timelines, hierarchical decision-making, and comparatively less involvement of the child and parents. Still, it is a system that gives child protection workers much leeway in what to do in care order proceedings. The California system is on the other end of the spectrum, highly regulated, with strict timelines and detailed decision-making tools in place. Parents and children may be collaborators in the process, but they are principally involved as informants whose material can be used as evidence. The English system is even more regulated than the California system, with strict guidelines and procedures to be followed. However, the guidelines require the strong involvement of parents and children, and there is no time line for the care order process. Thus, the space for

discretion and professional judgment for child protection workers across these four countries is quite different. US and English workers have little space for discretion – the use of judgment within clear restrictions – whereas Norwegian and Finnish workers have much space for discretion – discretion not bound by an authority and as such protected from overrule (Dworkin, 1967). In the figure below we have illustrated the systems and relative discretionary features.

<Figure 1 about here>

The discretionary space differs with the risk oriented systems on the one end, and family service oriented systems on the other end, indicating that there will be differences in what aspects of a decision-making process will be deemed important and less important. When we examine how care order proceedings are prescribed in law and regulations, following the four dimensions we have identified as decisive for the quality of a decision process, we find similarities and differences: first, all countries follow the principle of legality by setting the agenda with legislative criteria for interventions in the family, and demanding that evidence for harm or neglect of the child must be provided. In all countries except the US, it is also a criteria that a care order should be in the best interest (or well-being) of the child. It is notable that these states – with the exception of the US – have subscribed to the UN Convention on the Rights of the Child. In Norway and Finland, reflecting their service oriented systems and the connection between the social democratic welfare state and the child protection system (Pösö et al., 2013) in-home services must first be attempted and shown not to remedy the situation prior to a care order. A similar principle is also established in federal law in the US, although it is generally recognized that the bar for demonstrating such efforts is low, in part due to the significant risk of harm that stands as the threshold for intervention. Criteria used to justify a care order clearly shapes the evidence and information gathering process. The required evidence across these four systems is somewhat similar, as there is a requirement that legal expertise be involved to confirm that eligibility criteria have been met. Further, professionals and lay persons who know the child are queried. Norway stands out as lacking instruction on which professionals to consult, and instead bases its approach on general administrative principles.

Second, with regard to the involvement of children and parents, we see a gradual convergence across states. It is a generally held liberal principle to protect individual freedom, and only to protect others should the State restrict or interfere with an individual's liberty (Heywood, 2007). States have interpreted the freedom doctrine differently, as is evident in the welfare state models and child protection orientations of Norway and Finland on the one side, and England and the US, on the other. The question is how the child protection system views the child and the parents, and what roles they play in the care order proceedings. In England, Norway, and more so in Finland, parents are involved in decision-making and informed about care order proceedings. This speaks to the State's view of parents as service users, and, perhaps, as owners of the information gathered. It also gives an indication of these systems' views on the principles of individual autonomy, and the right to privacy. The contrast is the US where parents are offered legal representation from the state, but where they may not be directly involved in decision-making regarding care order

proceedings. Government direction about how or when to involve children in care order proceedings is quite similar in Finland, Norway and England. Children of all ages should be engaged, though the degree of their involvement may depend on an assessment of their age, maturity and ability to form an opinion. Subtle differences emerge between states on these issues, however, from children's participation based on their ability to form an opinion (for example, Norway), to children's age and maturity as measures of competence (for example, Finland and England). In fact, very young children have the capacity to form an opinion, though it is more difficult to assess competency (Archard and Skivenes, 2009). These understated differences likely result in large distributions between countries in the average age of participating children. Otherwise, there is only the Finnish system that entitles the child to a guardian or a spokesperson at the agency level, or, if necessary, a lawyer can be appointed. The risk oriented child protection system in California shows that child protection workers primarily consult with children during the information collection phase of the case. When cases go to court for care proceedings, legal counsel is appointed. In this regard, their voice is represented in court, but they are not actors themselves, unless invited to participate by the judge. The US system does not require that children are involved in agency decision-making, and as such stands in sharp relief from its comparison states.

Third, the amount of time child welfare workers are allowed to prepare a care order can have an impact on the opportunity to collect information, to speak with the child and parent, to reflect on and discuss the information and evidence that are gathered, and to seek a second opinion. In this regard, more time may be better, as in Finland and England, where staff work without strict deadlines in the care order process. But time can be problematic from the standpoint of the child who may be living in an unsafe situation, and for parents who may be unsure about the eventual resolution of the case. Timelines for care order proceedings differ substantially from none in Finland and England to only a few weeks (for example, US). These differences may be related to the threshold for intervention and the US being a risk oriented child protection system with a defined high threshold for intervention into the family and with a low provision of supportive services; a combination that may result in high risk situations for the child that may need more responsive protective systems to maintain safety.

The established internal and external accountability mechanisms are many in all four systems. Child protection staff working cooperatively together and manager oversight are typical in all four countries. Parents', lawyers', and children's access to documents and discussion points are evident within the family service oriented child protection systems. The oversight that is built into decision-making in the risk oriented systems of England and the US relies heavily on assessment tools and guidelines.

Even though an analysis of formal procedures cannot describe how the actual care order proceedings are conducted at the agency level, they tell us something about how governments weigh various factors, and what remains for frontline workers to decide. The overarching question is how these frameworks lay the groundwork for high quality care order decisions, or the discretionary justifications of decisions. Both the English and the US decision-making tools set some requirements on what factors to consider. Such an approach may standardize the criteria used for decision-making.

The system in California, guided by an evidence based decision-making tool, is focused on a justification for each decision, with standards in place to explain the worker's assessment. The risk oriented system that revolves around a high threshold for intervention may allow for these strict, evidence based regulations. When the principle of best interest or child well-being is at stake, and there are lower thresholds for intervention, the discretionary space is somewhat relaxed, as seen, in part, in the complex English framework, and in full in the Norwegian and Finnish systems.

### **Concluding remarks**

States appear to instruct social work decision-making more subtly in family-service systems than they do in child protection systems. The weaker and stronger steering mechanisms may be appropriate in the systems in which each is embedded. Some have pointed out that the prospects of governing front line workers as dim (Marinetto, 2011). This point remains to be examined in the child protection area, but we expect that front line workers in these four countries will handle care order proceedings differently because of the system differences identified herein. Thus, we expect child protection workers to be influenced by the 'accountability to professionals and citizen consumers of services' (Marinetto, 2011), but also accountable to the legislative and the system prescriptions within which they work (compare Maynard-Moody and Musheno, 2012).

Our analysis of the formal frameworks guiding child protection in four countries illuminates stark differences in the principles undergirding a similar intervention. What is clear is that these systems have different aims for how to conduct high quality care order decisions, depending on which standards for quality are applied. For example, if legitimacy is based on the involvement of those concerned, that is, the child and parents, we see that these four systems fulfill this standard, albeit to varying degrees, indicating different perceptions of autonomy and self-determination for individuals. The analysis also suggests that when studying child welfare decision-making, one should acknowledge the system in which the decisions are made (Duffy and Collins, 2010).

### **Note**

1 We use the term *child protection system* to characterize the systems that have responsibility for children at risk of harm or neglect from their caregivers or, who may be at risk of harm to themselves or others. In some countries, these may be referred to as *child welfare* systems. We use the term child protection workers as the label for the front line staff that interact with children and families and that prepare care orders. These workers can also be labeled social workers or child welfare workers. Due to space limitations, we are unable to follow up on the importance of professionals or their education and training. Detailed overviews of each country's systems are outlined in Gilbert et al., 2011.

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Figure 1 Relative Discretion features in four different child welfare systems

